CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
SOUTH REGIONAL BENCH AT HYDERABAD
BENCH - SM
COURT - I

Appeal(s) Involved:

ST/30617/2018-SM

(Arising out of Order-in-Appeal No. HYD-SVTAX-HYD-APP-114-17-18(APP-I]dated 20/02/2017 passed by Commissioner of Customs & Central Excise (Appeals), Hyderabad)

Prasad Media Corporations Pvt Ltd — Appellant(s)

Versus

The Commissioner of Central Tax, Hyderabad — Respondent(s)

Appearance:
Mr M.V.S. Sridhar Adv for the Appellant.
Mr A.V.L.N. Chary, A.R. for the Respondent.

CORAM:

HON'BLE Mr. M.V.Ravindran, MEMBER (JUDICIAL)

Date of Hearing: 05/12/2018

Date of Decision: 01/01/2019

Final Order No. A/01/ 2019

[Order per: M.V.Ravindran.]

This appeal is preferred against order-in-appeal No. HYD-SVTAX-HYD-APP-1-114-17-18-APP-1 dated 19-02-2018.

2. The relevant facts that arise for consideration are appellants were registered with the department for discharging service tax liabilities for various services rendered; they were having an amusement facility providing fund or recreation by means of rides, gaming devices and bowling alleys in the amusement part located in family entertainment centre complex which were exempt from payment of service tax in terms of Section 66 D of the Finance Act 1994 as they were covered under the negative list. However, the said entry in the negative list was omitted with effect from 01.06.2015 by Notification No. 14/2015-ST; as a consequence service tax liability arises is the claim of the revenue. The appellants premises were visited and on investigation it was found that the appellant had not declared the fact of providing amusement facilities. Hence the demand was raised invoking extended period. Show-cause notice sought to demand an amount of Rs 36,32,267/- as service tax with interest and also equivalent amount of penalty under Section 78 and further penalty under Section 77. Appellant contested the show-cause notice on merits as well as on limitation. The adjudicating authority after following the due process of law did not agree with the contentions raised by the appellant and confirmed the demands with interest and also imposed equivalent penalty under Section 78 and further penalty of Rs 10,000/- under Section 77 of the Finance Act 1944. Aggrieved by such an order, an appeal was preferred before the 1st Appellate Authority who also after following due process of law upheld the order-in-original but reduced tax liability considering the plea of cum tax benefit.

3. Learned counsel appearing for the appellant submits that the income which is sought to be taxed is from sporting events conducted in the premises which is built in the city of Hyderabad in about 2 acres and the sporting events premises is called as fun factory. He further submits that

principal commercial activity of the company consists of screening of films, sale of foods and beverages, rents, sporting events and sale of time and space for advertisements. It is also his submission that sporting events conducted are known by the following names Air hockey, basket ball-crazy shoot, arm charm, raceway-2, crazy hoops IV, deal or no deal, spin n win, crazy hoops III, slam A winner, go go, aqua jet, jumbo jackpot, sega rally, teddy's picnic, smack and aliens, fire fighter 1, ripper ribbit, triple spin. Subsequently he draws my attention to S.B. Sarkar's words and phrases of Excise, Customs and Service Tax wherein it is stated that term 'sport' *interalia* includes amusements, diversion, fun, pastime, running, jumping, throwing discus, playing for amusement especially as a past time of children, a competitive activity involving skill, chance or endurance played according to the rules, jest and fun. It is his submission that post 01.06.2015; demand has been raised which is incorrect as the appellant is charging only Rs 20/- as admission fee which is not disputed and is covered by the Entry No 47 of Notification No 25/2012-ST. It is also his further submission that appellant is paying entertainment tax which has been charged and wherever state tax is paid, service tax liability does not arise is the law. If service tax is also charged on this amount, it would amount to double taxation. He relies upon the decision of the Tribunal in the case of Lanco Infratech Ltd Vs CC, CE & ST [2015 (38) STR 709 (Tri-LB)] for the proposition that double taxation is impermissible; He also relies on the judgement of the Tribunal in the case of Grand Ashok Vs Commissioner of Service Tax Bangalore [2009 (15) STR 344 (Tri-Bang)] for the proposition that service tax is leviable only on the service component and service tax is not demandable simultaneously when the goods are involved and sales tax is paid.

4. Learned A.R. on the other hand after taking the Bench through the entire order submits that appellants are engaged in providing amusement facility under fun factory, the gaming and entertainment zone and have not take registration for the activity and are not paying service tax on the amount collected as entry fee to the fun factory area. It is his submission that post 01.06.2015, the admission to entertainment event or access to amusement facility became taxable and hence they are liable to pay the tax. It is his submission that the appellant claimed the benefit of exemption Notification No. 25/2012-ST (Sl No 47). It is his submission that this exemption is not available to them as it is very clear that the said Sl No 47 is talking about the recognised sporting event or musical performance and the definition of recognised sporting event comes under clause 2zab. It is his further submission that amusement is different form entertainment event and fun factory is not a sporting event it may not be considered as sporting event.

5. On a careful consideration of the submissions made by both sides, I find that the issue is regarding the demand of service tax on the appellant for the period June 2015 to July 2016 on the amount collected as entry fee. Appellant herein collects an amount of Rs 20/- as entry fee into the gaming zone or fun factory/entertainment zone. Prior to 01.06.2015, service tax liability on the entry fee for amusement and entertainment activity was mentioned in the negative list which would mean no service tax is payable. From 01.06.2015, the said entry has been removed and hence it is the case of the Revenue that the amount collected by the appellant as entry fee of Rs 20/- would be taxable while it is the case of the appellant that it is not so and they are eligible for the benefit of exemption Notification No. 25/2012.

6. I find that to come to a conclusion, the entry at Sl No 47 in Notification No. 25/2012-ST needs to be reproduced.

> "47. Services by way of right to admission to,-
>
> (i) exhibition of cinematographic film, circus, dance, or theatrical performance including drama or ballet;
>
> (ii) recognised sporting event;
>
> (iii) award function, concert, pageant, musical performance or any sporting event other than a recognised sporting event, where the consideration for admission is not more than Rs 500 per person.".

7. It can be seen from the above reproduced entry that the entry fee levied to the above referred activities are exempt from payment of duty. It can be seen from clause (iii) that it contains an entry to any sporting event other than a recognised sporting event, which would include any sporting event conducted other than recognised sporting event. It may be seen that appellant is conducting various sporting activity within the area in his premises which would definitely fall out of the definition of "recognised sporting event". Clause (zab) of clause ii of Notification No. 25/2012 defines recognised sporting event as under:-

> "(zab) "recognised sporting event" means any sporting event,-
>
> (i) organised by a recognised sports body where the participating team or individual represent any district, state, zone or country;
>
> (ii) covered under entry 11."

8. It may be seen that other clause only defines recognised sporting event and Sl No 47 also exempts sporting event other than recognised sporting event. Both the lower authorities have missed this point in the notification which has been claimed by the appellant right from the beginning. It is nobody's case that the activity undertaken in the premises is a sporting activity as has been recorded by the lower authorities. In my view, both the lower authorities have mis-construed Entry No. 47 to deny

the appellant exemption from service tax liability on the amounts charges by him which are less than Rs 500/- as required under Notification.

9. In view of the foregoing on merits itself, the appeal needs to be allowed and I do so. Appeal stands allowed and the impugned order is set side. Since the appeals are disposed of on merits, the Bench is not recording any findings on various submissions made by both sides.

(Order pronounced in open court on 01/01/2019)

M.V.Ravindran
MEMBER (JUDICIAL)

Neela Reddy