

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
HYDERABAD**

REGIONAL BENCH – COURT NO. 1

SERVICE TAX APPEAL No. 30488 of 2016

(Arising out of Order–in-Original No. HYD-SVTAX-000-COM-78 & 79-15-16 dated 30.03.2016 passed by Commissioner of Service Tax, Hyderabad)

Inox Leisure Ltd.

GVK One Mall, 5th Floor,
Road No.1, Banjara Hills
Hyderabad-500034.

...Appellant

Versus

Commissioner of Service Tax

Sitaram Prasad Tower, Red Hills,
Hyderabad-500004.

...Respondent

AND

SERVICE TAX APPEAL No. 30489 of 2016

(Arising out of Order–in-Original No. HYD-SVTAX-000-COM-78 & 79-15-16 dated 31.03.2016 passed by Commissioner of Service Tax, Hyderabad)

Inox Leisure Ltd.

GVK One Mall, 5th Floor,
Road No.1, Banjara Hills
Hyderabad-500034.

...Appellant

Versus

Commissioner of Service Tax

Sitaram Prasad Tower, Red Hills,
Hyderabad-500004.

...Respondent

APPEARANCE:

Shri Gopal Mundra, Advocate for the Appellant

Shri A. Rangadham, Authorised Representative of the Respondent

CORAM:

**HON'BLE MR.JUSTICE DILIP GUPTA, PRESIDENT
HON'BLE MR. P. V. SUBBA RAO, MEMBER (TECHNICAL)**

Date of Hearing: 01.10.2021

Date of Decision: 20.10.2021

FINAL ORDER NO. 30338-30339 / 2021

JUSTICE DILIP GUPTA:

Service Tax Appeal No. 30488 of 2016 has been filed by Inox Leisure Ltd.¹ to assail the order dated 30.03.2016 passed by the Commissioner of Service Tax, Hyderabad² confirming the demand of Rs. 2,67,79,932/- proposed towards service tax under 'business support services'³ under section 73(1) of the Finance Act, 1994⁴, with interest and penalty. The said service is said to have been provided during the period 09.05.2009 to 31.03.2012.

2. **Service Tax Appeal No. 30489 of 2016** has been filed by the appellant to assail the order dated 30.03.2016 passed by the Commissioner confirming the demand of Rs. 32,81,940/- proposed towards service tax under BSS under section 73(1A) of the Finance Act with interest and penalty. The said service is said to have been provided during the period 01.04.2012 to 30.06.2012.

3. The appellant is engaged in the business of exhibiting cinematographic films across India in theatres owned by the appellant or taken on rent. The appellant claims that it acquires the rights/license to exhibit the films at the designated theatres from various film distributors by entering into separate license agreements for each film. The consideration towards such license is paid by the appellant as per the agreed percentage of box office collection and such percentage varies from distributor to distributor, movie to movie and week to week, after the release date.

4. The Department issued two show cause notices dated 02.04.2014 and 22.05.2014 proposing to recover service tax of Rs.

-
1. the appellant
 2. the Commissioner
 3. BSS
 4. the Finance Act

2,67,79,932/- and Rs. 32,81,940/- with applicable interest and penalty for the period 09.05.2009 to 31.03.2012 and 01.04.2012 to 30.06.2012 respectively.

5. The show cause notices were adjudicated upon by a common order dated 30.03.2016 and the demands were confirmed for the following reasons:

- a. The appellant was providing services to distributors/producers in the nature of infrastructure support services falling within the definition of taxable service category of BSS defined under section 65(104c) of the Finance Act; and
- b. In view of the Circular dated 13.12.2011, revenue sharing arrangement would be liable to service tax.

2. The relevant portion of the order passed by the Commissioner is reproduced below:

“54. From the above observation, it is clear that what is owned by the assessee is the infrastructure required to exhibit the cinematographic film. But the assessee is not having the right to exhibit the film on their own. The producers/ supplier of the cinematographic film is not having the required infrastructure to exhibit the film. **Hence, the assessee extended the support to the suppliers by way of providing the infrastructure they own to exhibit the film and this activity squarely falls under the definition of Business Support Service as it is in the nature of infrastructural support services.**

55. Another contention of the assessee is that revenue sharing agreements are not taxable under the Finance Act, 1994. In support of their claim, the assessee referred to Para 2.2 of the Circular No. 109/3/2009-ST dated 23.02.2009. The contents of this circular are again clarified vide Circular No. 148/17/2011-ST dated 13.12.2011.

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56. The above clarification negated all the contentions raised by the assessee in support of their defence and different models such as revenue sharing, principal, unincorporated joint venture, partnership etc. are clearly under Service Tax net under appropriate service.

57. In view of the above discussions, it is clear that the activity rendered by the assessee to their suppliers is in the nature of 'Infrastructure Support Service' falling

within the definition of Business Support Service Service under Section 65(105)(zzzq) of the Finance Act, 1994.”

(emphasis supplied)

3. Shri Gopal Mundra, learned counsel for the appellant made the following submissions:

(i) The issue involved in the appeal has been decided in favour of the appellant in the following decisions of the Tribunal:

- (a) **M/s. PVS Multiplex India Pvt. Ltd. vs. Commissioner of Central Excise, Meerut-I⁵;**
- (b) **M/s. Moti Talkies vs. Commissioner of Service Tax, Delhi-I⁶;**
- (c) **M/s. The Asian Art Printers (Sheila Theatre) vs. Principal Commissioner of Service Tax, Delhi-I⁷;**
- (d) **Shri Vinay Kumar, Proprietor of M/s. Regal Theatre vs. Principal Commissioner of Service Tax, Delhi-I⁸;**
- (e) **M/s. Golcha Properties Pvt. Ltd. vs. Principal Commissioner of Service Tax, Delhi-I⁹; and**
- (f) **Satyam Cineplexes Ltd. vs. Principal Commissioner of Service Tax, Delhi-I¹⁰;**

(ii) A revenue sharing arrangement in itself does not necessarily imply provision of service, unless service provider and service recipient relationship is established. In this connection reliance has been placed on the following decisions:

- (a) **Mormugao Port Trust vs. Commissioner of Customs, Central Excise & Service Tax, Goa- (Vice-Versa)¹¹;**
- (b) **M/s. Old World Hospitality Limited vs. CST, New Delhi¹²; and**

5. 2017 (11) TMI-156- CESTAT Allahabad
 6. 2020 (6) TMI 87- CESTAT New Delhi
 7. 2020 (12) TMI 1012- CESTAT New Delhi
 8. 2020 (11) TMI 436- CESTAT New Delhi
 9. 2020 (11) TMI 137- CESTAT New Delhi
 10. 2020 (8) TMI 1222- CESTAT New Delhi
 11. 2016 (11) TMI 520- CESTAT Mumbai
 12. 2017 (2) TMI 1176- CESTAT New Delhi

(c) Delhi International Airport P. Ltd. vs. Union of India & Ors.¹³;

- (iii)** The impugned order to the extent it alleges that the appellant provided BSS to the distributors/or an unincorporated association of persons, therefore, deserves to be set aside;
- (iv)** No service tax is payable in the absence of provision of any service by the appellant to the distributor/producer/unincorporated joint venture;
- (v)** It is settled law that unless the authorities provide evidence to the contrary, an agreement is required to be read in a manner that it reflects the true intention of the parties as regards their respective roles and obligations;
- (vi)** The Commissioner failed to appreciate that the essential parameters laid down for existence of a joint venture are (a) joint ownership and control, (b) sharing profits and losses, (c) salaries commonly and jointly fixed, and (d) community of interest and intention. A joint venture or association of persons cannot be said to be constituted / created in the absence of such parameters. In support of this contention, reliance has been placed on the following decisions of the Supreme Court:

- (a) G. Murgugesan and Brothers vs. Commissioner of Income-Tax, Madras¹⁴; and**
- (b) Faqir Chand Gulati vs. Uppal Agencies Pvt. Ltd.¹⁵; and**

13. WP(C) 2516/2008 & CM No. 15832/2011 dated 14.02.2017
 14. 1973 (2) TMI 1- Supreme Court
 15. 2008 (7) TMI 159- Supreme Court

(vii) No service, much less a service in the nature of BSS was provided by the appellant.

4. Shri A. Rangadham, learned Authorised Representative appearing for the Department has, however, supported the impugned and contended:

- (i)** The appellant is not justified in asserting that the issue involved in this appeal stands decided in favour of the appellant in view of the earlier decisions of the Tribunal since these decisions are not in the context of BSS service provided by the appellant to the distributors/producers;
- (ii)** The producers/suppliers of films require a theatre to screen the films and the appellant provides assistance and support for screening the films. Thus, the appellant extends support to the producers/suppliers of films by providing the infrastructure and this activity would fall under the definition of BSS; and
- (iii)** In view of the Circulars dated 23.02.2009 and 13.12.2011 issued by the Central Board of Excise and Customs in connection with service tax on movie theaters, the appellant is not justified in contending that service tax would not be leviable if revenue is shared between the appellant and the producers of films.

5. The contentions advanced by the learned Counsel for the appellant and the learned Authorised Representative appearing for the Department have been considered.

6. 'Support services of business or commerce' has been defined in sub-section 104(c) of section 65 of the Finance Act to mean as follows:

“(104c) **“Support services of business or commerce” means services provided in relation to business or commerce and includes** evaluation of prospective customers, telemarketing, processing of purchase orders and fulfillment services, information and tracking of delivery schedules, managing distribution and logistics, customer relationship management services, accounting and processing of transactions, operational or administrative assistance in any manner, formulation of customer service and pricing policies, **infrastructural support services** and other transaction processing.

Explanation.— For the purposes of this clause, the expression “infrastructural support services” includes providing office along with office utilities, lounge, reception with competent personnel to handle messages, secretarial services, internet and telecom facilities, pantry and security.”

(emphasis supplied)

7. It is made taxable under section 65(105)(zzzq) of the Finance Act which is reproduced below:

“Section 65(105)(zzzq) ‘taxable service’ means any service provided or to be provided to any person, by any other person, in relation to support services of business or commerce, in any manner;

8. The issue that arises for consideration is whether the activity carried out by the appellant would be exigible to service tax under BSS. To appreciate this, it would be pertinent to refer to the relevant clauses of the Agreement dated 15.12.2009¹⁶ entered into between SPE Films India Private Limited and the appellant and they are as follows:

Agreement

“WHEREAS:

16. the Agreement

- A. SPE Films, as the case may be, is a producer and/or distributor inter alia, engaged in the business of production, and distribution of cinematograph motion pictures;
- B. Exhibitor is an exhibitor, inter alia, engaged in the business of exhibition of cinematograph motion pictures and owns and/or operates a chain of multiplex theatres under the brand name "Inox";

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1. General Interpretation and Definitions

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- 1.2.10. "License" means the non-exclusive license (without the right to sublicense) granted to the Exhibitor to exploit the theatrical rights of Motion Pictures in the Designated Screens and the Additional Prints during the Term hereof.

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- 1.2.17. **"Showcasing"** means the right of the Exhibitor to decide which screen/s to play the Motion Picture in ("Designated Screen/s"), number of shows to exhibit the Motion Picture, show timings, and ticket pricing for the Motion Picture including the right to decide on a week to week basis, whether or not to continue to exhibit the Motion Picture, in the same or different screen, and for the same or different number of shows and show timings and ticket pricing.

- 1.2.18. **"Theatrical Right"** shall mean the right to exhibit, market, advertise, publicize, derive revenues or otherwise commercially exploit the Motion Picture in 35MM or digital format in Multiplexes in the Territory during the Terms in the agreed language, for viewing in Designated Screens to any audience or by the general public on a regularly scheduled basis where a ticket for such viewing is issued by the Exhibitor for admission of any person to a Multiplex but excluding hotels/ restaurants/ bars/ pubs and other places.

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2. Distribution Strategy / Showcasing

- 2.1.1. The Parties agree and understand that SPE Films shall License the Motion Pictures for exploitation of Theatrical Rights and the Exhibitor shall exhibit the Motion Pictures

during the Term of this Agreement, on the terms and conditions set out in this Agreement.

- 1.1.2. This Agreement shall be the master agreement governing the Motion Pictures for which the Theatrical Rights will be granted by SPE Films to the Exhibitor during the Term. The specific details in respect of each Motion Picture, pertaining to the Designated Screens, the number of Prints provided to Exhibitor, the Refundable Advance, publicity materials and quantities thereof, shall be set out in the Annexure for each Motion Picture and executed in writing from time to time when the Theatrical Rights of such Motion Pictures are granted to the Exhibitor for the exhibition of the Motion Picture, in accordance with the procedure and timelines prescribed in clause 2.2 below. Such individual Annexures will form part of this Agreement only when duly signed by both the parties. It is clarified and understood that the amount of Refundable Advance shall be mutually agreed between Parties. However, no such term of such individual Annexure shall conflict with or violate the terms of this Agreement, and in the event of any such repugnancy, the terms of this Agreement shall prevail.

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3. Grant of Rights

- 3.1 **For the consideration hereinafter stated, and subject to the Procedure as per clause 2.2, SPE Films agrees to grant to the Exhibitor, the non-exclusive license (without the right to sub-license) to exploit the Theatrical Rights of a Motion Picture, in the Territory during the Term.**
- 3.2 Subject to the grant of Theatrical Rights, as set out herein, **the ownership rights, copyrights, Intellectual Property Rights and negative rights in/of the each of the Motion Pictures shall continue to vest solely with SPE Films, exclusively and perpetually.**
- 3.3 SPE films shall be free to grant the Theatrical Rights of a particular Motion Picture to any other entity in the Territory and during the same Term, as it may deem fit and necessary. Similarly, the Exhibitor shall also be free to exhibit the motion pictures of other entities in the Multiplexes during the Term.
- 3.4 The Exhibitor acknowledges that except for the non-exclusive, non-assignable license of the Theatrical Rights of the Motion Picture for exhibition thereof in Designated Screens, all other rights of any nature whatsoever in the said Motion Picture exclusively vest and are reserved by and to SPE Films of the Motion Picture, as the case may

be, who shall retain the same and be entitled to exploit it as it deems fit and necessary..

- 3.5 **The Parties acknowledge that either Party shall, subject to the terms of this Agreement, be entitled to conduct its business at its absolute and sole discretion, and the either Party shall not be entitled to interfere or otherwise influence any decision of the other party in respect of the conduct of its business.** In particular, the Exhibitor is entitled to do Corporate Bookings, Block Bookings, etc. for any Motion Picture for any show, at its sole and absolute discretion.

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5. CONSIDERATION

- 5.1 **In consideration of SPE Films agreeing to grant to the Exhibitor, the License to exploit the Theatrical Rights of a Motion Picture, the Exhibitor shall pay to SPE Films, such revenue share (the "Revenue Share") in respect of the Motion Picture, as is set out hereinunder.** The Revenue Share shall be computed on the Net Collections received by the Exhibitor from the exhibition of the Hindi Motion Pictures produced and/or distributed by SPE Films across all the Multiplexes, as the case may be:

- 5.1.1 1st Exhibition Week: 50% of the Net Collections
- 5.1.2 2nd Exhibition Week: 42.5% of the Net Collections
- 5.1.3 3rd Exhibition Week: 37.5% of the Net Collections
- 5.1.4 4th Exhibition Week onwards till the last Exhibition Week: 30% of the Net Collections.

- 5.2 This Revenue Share shall be applicable for all the Motion Pictures that are granted by SPE Films to the Exhibitor for exploitation during the Term. This Revenue Share shall be maintained throughout the Term of this Agreement and for all Motion Pictures and Multiplexes.

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- 5.10.2. **Service Charge:** The Exhibitor shall be entitled to deduct service charge wherever applicable, at actual, as prescribed by the statutory authority."

(emphasis supplied)

9. The said Agreement would indicate that:

- (i) The distributor / supplier has granted a non-exclusive license to the appellant to exploit the theatrical rights of films in the designated screens;

- (ii) The ownership rights, copyrights and other intellectual property rights in the films continue to solely vest with the distributor / supplier;
- (iii) The Agreement specifically does not constitute a partnership or agency between the parties and neither has any authority to bind the other. The Agreement is on principal-to-principal basis and nothing thereunder shall be deemed to be a collaboration or partnership or agency between the parties;
- (iv) The showcasing strategy is the sole prerogative of the appellant, who has the right to (a) exhibit, market, advertise, publicize, derive revenues and otherwise exploit the films, and (b) to decide which screen to showcase the films, the number of shows to exhibit, show timings, ticket pricing etc. and the distributor / supplier has no say in these activities;
- (v) Each party (the appellant and the distributor / supplier) is entitled to conduct its business at its absolute and sole discretion without being influenced by the other;
- (vi) The appellant would exhibit such films in multiplexes owned / operated by it under its own brand name; and
- (vii) In consideration of the grant to the appellant the license to exploit the theatrical rights of the motion picture, the exhibitor shall pay the revenue share set out in the Agreement.

10. In the present case the Department has alleged that the appellant is providing infrastructure support services to the producers/distributors of films under BSS.

11. It would be seen from the agreement that the SPE Films is a producer/distributor engaged in the business of production and distribution of films, while the appellant is an exhibitor engaged in the business of exhibition of films and owns/operates a chain of multiplex theatres under the brand name "Inox". The exhibitor decides which

screens would play the motion picture, the numbers of shows, the show timings and the ticket pricing including the right to decide on a week to week basis, whether or not to continue to exhibit the motion picture. The distributor/producer had granted the exhibitor the non exclusive license to exploit the theatrical rights of a motion picture and each party was entitled to conduct its business in its absolute and sole discretion. It was further made clear in the Agreement that either of the party shall not interfere or otherwise influence any decision of the other party in respect of the conduct of its business.

12. Such an arrangement between a distributor/producer and an exhibitor of films was examined by a Division Bench of the Tribunal in **Moti Talkies**. The Department alleged that the agreement was for 'renting of immovable property' as defined under section 65(90a) of the Finance Act. This contention was not accepted by the Tribunal and it was observed that the appellant did not provide any service to the distributors nor the distributors made any payments to the appellant as consideration for the alleged service. In fact, it was the appellant who had paid money to the distributors for the screening the rights conferred upon the appellant. The observations of the Bench are as follows:

"11. It is more than apparent from a bare perusal of the aforesaid agreements that they have been entered into between the appellant as an exhibitor and the distributors for screening of the films on the terms and conditions mentioned therein. The payments contemplated under the terms and conditions either require the exhibitor to pay a fixed amount or a certain percentage, subject to minimum exhibitor share or theatre share of effective shows in a week.

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16. It is very difficult to even visualise that the appellant is providing any service to the distributor by renting of immovable property or even any

other service in relation to such renting. The agreements that have been executed between the appellant and the distributors confer rights upon the appellant to screen the film for which the appellant is making payment to the distributors. The distributors are not making any payment to the appellant. Thus, no consideration flows from the distributors to the appellant for the alleged service.

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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.”

(emphasis supplied)

13. Similar views were expressed by Division Benches of the Tribunal in **The Asian Art Printers, Shri Vinay Kumar, M/s. Golcha Properties and Satyam Cineplexes Ltd.**

14. What also needs to be noticed is that if the appellant was providing such a service, it would be the producers/ distributors who would be making payments to the appellant, but what comes out from a perusal of clause 5.1 of the Agreement is that in consideration for the distributor agreeing to grant to the appellant the license to exploit the theatrical rights of a motion picture, the appellant would have to pay such revenue share to the distributor as provided for in the said clause. In fact, clause 3.1 of the Agreement provides that distributor

agreed to grant to the Appellant the non exclusive license to exploit the theatrical rights of a motion picture during the term.

15. This issue had come up for consideration before a Division Bench of the Tribunal in **PVS Multiplex India**. The Bench observed that as the appellant was screening films on revenue sharing basis, the appellant was not liable to pay service tax on the payments made to the distributors for screening the films.

“7. Having considered contentions and on perusal of the facts on record, we are satisfied that there is no dispute of fact that the appellant have been screening films in their multiplex on Revenue Sharing basis, which is undisputed finding recorded by the Id. Commissioner in the impugned order. Accordingly, we hold that the appellant is not liable to pay Service Tax for Screening of Films and payments to distributors in their theatre.”

(emphasis supplied)

16. This apart, a revenue sharing arrangement does not necessarily imply provision of services, unless the service provider and service recipient relationship is established. This is what was observed by the Tribunal in **Mormugao Port Trust, Old World Hospitality and Delhi International Airport**.

17. In **Mormugao Port Trust**, the Tribunal explained that public private partnerships between the Government/Public Enterprises and Private parties are in the nature of joint venture, where two or more parties come together to carry out a specific economic venture, and share the profits arising from such venture. Such public private partnerships are at times described as collaboration, joint venture, consortium or joint undertaking. Regardless of the name or the legal form in which the same are conducted, they are essentially in the nature of partnership with each co-venturer contributing some of the

resources for the furtherance of the joint business activity. The Tribunal held that such public private partnerships meet the test laid down by the Supreme Court in **Faqir Chand Gulati vs. Uppal Agencies Pvt Ltd**¹⁷, for ascertaining whether or not the arrangement is one of joint venture. The relevant observations of the Tribunal in **Mormugao Port Trust** are reproduced below:

“12 In our view this arrangement in the nature of the joint venture where two parties have got together to carry out a specific economic venture on a revenue sharing model. Such PPP arrangement are common nowadays not only in the port sector but also in various other sectors such as road construction, airport construction, oil and gas exploration where the Government has exclusive privilege of conducting businesses. In all such models, the public entity brings in the resource over which it has the exclusive right, whether land, water front or the right to exploit the said land and water front, and the private entities brings in the required resources either capital, or technical expertise necessary for commercial exploitation of the resource belonging to the Government. These PPP arrangements are described sometimes as collaboration, joint venture, consortium, joint undertaking, but regardless of their name or the legal form in which these are conducted. These are arrangements in the nature of partnership with each co-venturer contributing in some resource for the furtherance of the joint business activity.

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15. An analysis of this judgment shows that in order to constitute a joint venture, the arrangement amongst the parties should be a contractual one, the objective should be to undertake a common enterprise for profit. Joint control over strategic financial and operative decisions was held to be the key feature of a joint venture. The other obvious feature of a joint venture would be that the parties participate in such a venture not as independent contractors but as entrepreneurs desirous to earn profits, the extent whereof may be contingent upon the success of the venture, rather than any fixed fees or consideration for any specific services.

17 The question that arises for consideration is whether the activity undertaken by a co-venture

(partner) for the furtherance of the joint venture (partnership) can be said to be a service rendered by such co-venturer (partner) to the Joint Venture (Partnership). In our view, the answer to this question has to be in the negative inasmuch as whatever the partner does for the furtherance of the business of the partnership, he does so only for advancing his own interest as he has a stake in the success of the venture. There is neither an intention to render a service to the other partners nor is there any consideration fixed as a quid pro quo for any particular service of a partner. All the resources and contribution of a partner enter into a common pool of resource required for running the joint enterprise and if such an enterprise is successful the partners become entitled to profits as a reward for the risks taken by them for investing their resources in the venture. A contractor-contractee or the principal-client relationship which is an essential element of any taxable service is absent in the relationship amongst the partners/co-venturers or between the co-venturers and joint venture. In such an arrangement of joint venture/partnership, the element of consideration i.e. the quid pro quo for services, which is a necessary ingredient of any taxable service is absent.

18. The Civil Appeal filed by the Department (**Commissioner vs. Mormugao Port Trust**) against the aforesaid decision of the Tribunal was dismissed by the Supreme Court both on the ground of delay as well as on merits and the judgment is reported in **2018 (19) GSTL J 118 (SC)**.

19. The Circular dated 23.02.2009 issued by the Central Board of Excise and Customs, infact supports the case of the appellant. The relevant portion of the Circular, which is in connection with service tax on movie theatres, is reproduced below:

2.4. The arrangement most commonly entered into between a theater owner and a distributor is that the theater owner screens the movie for fixed number of days under a contract. The proceeds earned through sale of tickets go to the distributor but the theatre owner receives a fixed sum depending upon the number of days of screening. In this arrangement, the advertisement and display of posters etc. is done by the distributor. Under this arrangement, the fixed amount contracted is given

to the theater owner by the distributor irrespective of the fact whether the movie runs well or not. However, there is no rental arrangement between the theater owner and the distributor as in the arrangement at paragraph 2.1 above. **A view has been expressed that in this arrangement, the theater owner provides 'Business Support Service' to the distributor and hence is liable to pay service tax on the fixed amount received by the theater owner.**

2.5. The matter has been examined. By definition 'Business Support Service' is a generic service of providing 'support to the business or commerce of the service receiver'. **In other words the principal activity is to be undertaken by the client while assistance or support is provided by the taxable service provider. In the instant case the theatre owner screens/exhibits a movie that has been provided by the distributor. Such an exhibition is not a support or assistance activity but is an activity on its own accord. That being the case such an activity cannot fall under 'Business Support Service'.**

3. In the light of above, it is clarified that screening of a movie is not a taxable service except where the distributor leases out the theater and the theater owner get a fixed rent. In such case, the service provided by the theater owner would be categorized as 'Renting of immovable property for furtherance of business or commerce' and the theater owner would be liable to pay tax on the rent received from the distributor. The facts of each case and the terms of contract must be examined before a view is taken.

4. All pending cases may be disposed of accordingly. In case any difficulty is faced in implementing these instructions, the same may be brought to the notice of the undersigned."

(emphasis supplied)

20. The subsequent Circular dated 13.12.2011 issued by the Central Board of Excise and Customs, apart from the fact that it would not be applicable for confirming a demand for any period prior to 13.12.2011, would also not come to the aid of the Department. The relevant portion of the Circular is reproduced below:

9. Thus, where the distributor or sub-distributor or area distributor enters into an arrangement with the exhibitor or theatre owner, with the understanding to share revenue/profits and not provide the service on principal-to-principal basis, a new entity emerges, distinct from its constituents. As the new entity acquires the character of a "person", the transactions between it and the other independent entities namely the distributor/sub-distributor / area distributor and the exhibitor etc

will be a taxable service. Whereas, in cases the character of a "person" is not acquired in the business transaction and the transaction is as on principal-to-principal basis, the tax is leviable on either of the constituent members based on the nature of the transaction and as per rules of classification of service as embodied under Sec 65A of Finance Act, 1994.

(emphasis supplied)

21. The impugned order has confirmed the demand on the basis that the appellant provided 'infrastructure support services' to the appellant. However, the show cause notice alleged that the appellant was providing 'operational and administrative assistance' with supplier. The Commissioner could not have gone beyond the scope of the show cause notice to confirm the demand. This apart, in view of the decision of the Supreme Court in **Faqir Chand Gulati** and the decision of the Tribunal in **Mormugao Port Trust**, no service tax can be levied on the appellant under BSS.

22. Thus, for all the reasons stated above, it is not possible to sustain the confirmation of the two demands under the order dated 30.03.2016 passed by the Commissioner. The said order dated 30.03.2016 is, accordingly, set aside and Service Tax Appeal No. 30488 of 2016 and Service Tax Appeal No. 30489 of 2016 are allowed.

(Pronounced on **20.10.2021**)

(JUSTICE DILIP GUPTA)
PRESIDENT

(P. V. SUBBA RAO)
MEMBER (TECHNICAL)

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
HYDERABAD**

REGIONAL BENCH – COURT NO. 1

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APPEARANCE:

Shri Gopal Mundra, Advocate for the Appellant

Shri A. Rangadham, Authorised Representative of the Respondent

CORAM: **HON'BLE MR.JUSTICE DILIP GUPTA, PRESIDENT**
HON'BLE MS. SULEKHA BEEVI C.S., MEMBER (JUDICIAL)
HON'BLE MR. P. V. SUBBA RAO, MEMBER (TECHNICAL)

Date of Hearing: 01.10.2021

Date of Decision: 20.10.2021

Order Pronounced.

(JUSTICE DILIP GUPTA)
PRESIDENT

(MS. SULEKHA BEEVI C.S.)
MEMBER (JUDICIAL)

(P.V. SUBBA RAO)
MEMBER (TECHNICAL)