IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL,
EAST REGIONAL BENCH : KOLKATA

Service Tax Appeal No.77145 of 2018

(Arising out of Order-in-Appeal No.69/S.Tax-II/Kol/2018 dated 09.02.2018 passed by Commr. of CGST & Central Excise (Appeals), Kolkata)

M/s The Saturday Club Ltd.
7, Wood Street, Kolkata-700016

Applicant

VERSUS

CGST & Excise, Kolkata South
180, Shantipally, Rajdanga Main Road, Kolkata-700107

Respondent

Appearance:

Shri Ankit Kanodia, C.A. for the Appellant
Shri D.Halder, A.R. for the Respondent

CORAM:

HON'BLE SHRI P. K. CHOUDHARY, JUDICIAL MEMBER
HON'BLE SHRI BIJAY KUMAR, TECHNICAL MEMBER

FINAL ORDER NO.76601/2019

DATE OF HEARING : 09.08.2019

DATE OF DECISION : 09.08.2019

PER P.K.CHOUDHARY :

The facts of the case in brief are that the appellant is engaged in providing club services and other related services and is thus registered with the service tax department since the introduction of Club and Association services in the Finance Act from 16/06/2005 by inserting the taxable service under section 65(105)(zzze) of the Finance Act, 1994. The Appellants have entered into contract with M/s. Ayojan Caterer, Gupta Brothers, Dutta & Co. (Kwality Walls), Sanjay Das (Metro Dairy), Camelia Cha Bar (Tea Corner) and Miss Julies (Beauty Parlour) for sale of food items and services to its members wherein the Appellant pays the vendors as per the contract which becomes an expense for sale of goods or services. Under the above background, a Show cause notice dated 05.10.2010 was issued to the Appellant by classifying the above services as Commission agent services and thereby levying a tax of Rs.6,61,416/- under Business Auxiliary Services for the period 2007-08 to 2009-10 on the ground that the Appellant club acts as an agent on behalf of these vendors. Upon Adjudication, the Ld. Adjudicating authority, dropped the demand for the period 2007-08 and 2008-09 on the grounds of limitation but confirmed the demand to the extent of Rs.2,11,455/- for the period 2009-10 and levied interest under section 75 of the Finance Act and imposed penalty of Rs.5,000/- each under section 77(2) and 77(1)(d) of the said Act. On Appeal, the Ld. Commissioner (Appeals) upheld the impugned OIO. Hence, the present appeal before the Tribunal.

2. The Ld. Chartered Accountant, Shri Ankit Kanodia, appearing on behalf of the appellant, submits that the Appellant is a members' club and as such is not a separate entity in the eyes of the law. The Appellant and its members are the same person and the Appellant can in no circumstance act as an agent on behalf of the third parties and receive commission as the Appellant is governed by its rules and regulations of being a members club. He further submitted that the billing for the services consumed by the members of the Appellant club is done by the Appellant only and the vendors who provide such services to the Appellant are paid an amount on the basis of the agreements defining consideration for such services provided by the vendors to the Appellant club and its members. The Ld. C.A. submits that the demand has been confirmed on the difference of the value of amount received by the Appellant club from its members and the amount paid by it to the vendors considering the same as commission received from the vendors which in view of the Ld.C.A. is nothing but profit on sale of goods and services to its members. The Ld.C.A. also submits that the Appellant has already paid sales tax on the supplies

made to its members. He relied on the following judgments in support of his submissions :

a. **Madras Race Club versus Commissioner of Service Tax, Chennai [2009 (14) S.T.R. 646 (Tri.-Chennai)]**,
b. Re The Saturday Club Limited reported in [2006 (3) S.T.R. 305 (Cal.)]

He further contended that on the same issue for the earlier period 2004-05, the said demand had been dropped by the Ld. Commissioner (Appeals-II), Kolkata, vide Order-in-Appeal No. 214/ST-II/KOL/2016-17 dated 25/11/2016 and on review of the same before the Tribunal, the same was dismissed vide FO/A/76176-76194/2017 dated 10/7/2017 under serial No. 21.

3. The Ld. D.R., Shri D.Halder, reiterated the contents of the Order and justifies the same.

4. Heard both sides and perused the appeal records.

5. We find that the issue to be decided in the present case is whether the Appellant club can act as an agent on behalf of third party suppliers and thereby earn commission from the same. In this regard, we find that the issue is no more *res integra* in the light of the decision of the co-ordinate Bench of the Tribunal in the case of ROYAL WESTERN INDIA TURF CLUB LTD. Versus COMMR. OF S.T., MUMBAI 2015 (38) S.T.R. 811 (Tri. - Mumbai) wherein it was held that-

> *"**5.8** As regards the department's claim for Service Tax under the category of 'Business Support Services' from the book makers and the caterer, the activity of the appellant was to make available space within the premises of the turf club by way of stall or canteen, for a consideration. This activity is nothing but hiring/leasing of immovable property defined under clause (zzzz) of Section 65(105) of Finance Act, 1994 which defines the service as "renting of immovable property or any other service in relation to such renting, for use in the: course of or for furtherance of business or commerce". Business support service is defined in clause (104c) of Section 65 as follows :-*
>
> *"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 of office space along with office utilities, lounge, reception with competent personnel to handle messages, secretarial services, internet and telecom facilities, pantry and security."

5.9 *A reading of the above definition makes it very clear that mere renting of office space does not come within the definition. Such providing of space should be along with other facilities specified therein. It is not the case of the department such facilities have been provided to the book makers or the caterer. Therefore, we do not find any merit in the argument that the renting of office space to the caterer/book maker is liable to be classified as "business support service".*

5.10 *The C.B.E. & C. Circular 334/4/2006-TRU, dated 28-2-2006 makes this position very clear as under :-*

"Business entities outsource a number of services for use in business or commerce. These services include transaction processing, routine administration or accountancy, customer relationship management and tele-marketing. There are also business entities which provide infrastructural support such as providing instant offices along with secretarial assistance known as "Business Centre Services". It is proposed to tax all such outsourced services."

It is not the department's case that the book makers and the caterer outsourced infrastructural support from the appellant Turf Club.

6. *In the light of the above discussion, we do not find any merit in the impugned orders confirming Service Tax demand. Accordingly we set aside the same and allow the appeals, with consequential relief, if any."*

Also from the Order-in-Appeal No. 214/ST-II/KOL/2016-17 dated 25/11/2016, we find that the Appellant was allowed the relief on the same issue.

6. In view of the above decisions, the impugned orders are set aside and the appeal filed by the appellant is allowed with consequential benefit, if any.

(Operative part of the order was pronounced in the open court)

Sd/

(P. K. Choudhary)
Member (Judicial)

Sd/

(Bijay Kumar)
Member (Technical)

mm