IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, KOLKATA

REGIONAL BENCH – COURT NO.2

Service Tax Appeal No. 310 of 2012

(Arising out of Order-In-Original No. 87/Commr/ST/Kol/2011-12 dated 29.03.2012 passed by Commissioner of Service Tax, Kolkata.)

M/s. ITC Sonar
(1, JBS Haldane Avenue, Kolkata-700046)

Appellant

VERSUS

Commr. of Service Tax, Kolkata
(Utpad Shuld Bhawan (3rd Floor) 180, Santipally, Rajdanga Main Road, Kolkata-700107)

R**espondent**

APPEARANCE :
Mr. J. P. Khitan, Sr. Advocate, A. Sengupta, S, Mukherjee, N. Bhattacharya, I. Banerjee, all Advocates for the Appellant
Mr. S. K. Dikshit, Authorized Representative for the Respondent

CORAM:
HON'BLE MR. R. MURALIDHAR, MEMBER (JUDICIAL)
HON'BLE MR. K. ANPAZHAKAN, MEMBER (TECHNICAL)

FINAL ORDER NO.75077/2025

Date of Hearing : 16 December 2024
Date of Decision: : 17/01/2025

PER R. MURALIDHAR:

The appellant ITC Sonar is part of the division of ITC Limited. They are registered with the Service Tax department with service tax registration number AAAC15950LST005. For the services rendered by them, they were paying the Service Tax. In the course of providing services to their client who check in into their hotel, the appellants were engaging cabs for their to and fro movement. Such cabs were being provided by International Travel House Limited, [ITH for short] who is registered with the Service Tax Department for providing rent-a-cab services. In the normal course, ITH provided the cabs to the guests and raised their bill on the guests. Such bills clearly indicated the Service Tax thereon. Sometimes, instead of making direct payment to ITH for the sake of convenience, the guests paid the bill of ITH to ITC Sonar (the present appellant). The appellant collected such charges from the guests on behalf of ITH and the same amount was immediately paid to ITH without retaining any amount. For such services, no consideration was paid by International Travel House Limited to the appellant. The Department took the view that appellant was providing rent-a-cab services by hiring the vehicles from other agencies. On 18-10-2011, a Show Cause Notice was issued invoking the extended period provisions. The appellants, in response, submitted that they were only taking the payment from the guests and then forwarding it to ITH and not retaining any amount and at the same time, the appellant was not being paid any consideration by ITH. Thus, they stated that no service was being provided by them, neither to the guests nor to International Travel House Limited.

2. The appellants in the course of their business provided accommodation to the employees of other Division and such cost was debited to the account of that Division. The demand was raised on the same as consideration received from 'Associate Enterprises'. The appellants clarified that the service has been rendered to the other Divisions of ITC and hence would amount to 'self service'. After due process, the Adjudicating Authority confirmed the demand. Being aggrieved, the appellant is before the tribunal.

3. The Learned Counsel appearing on behalf of the appellant submits that the Adjudicating Authority in the OIO at Para 5.1.2 accepts that rent-a-cab service was provided to the hotel guests by International Travel House Limited but still has gone ahead with confirmation of the demand on the ground that the appellant has not provided any clear documentary proof that ITH had paid the Service Tax. The Adjudicating Authority also relied on some reference to the website of the appellant to come to a conclusion that the appellant was providing the rent-a-cab service. The Learned Counsel submits that this was not part of the show cause notice at all. Thus, the adjudicating authority has traversed beyond the scope of the show cause notice. The Learned Counsel takes us through the sample invoices enclosed with the appeal papers/the present submissions. He

draws our attention to the invoices raised by ITH wherein the service tax registration number AAAC10093GST013 is clearly visible and the service tax is already charged by ITH for the services rendered by them. This bill shows that the rent-a-cab service was provided by ITH and not by the present appellant ITC Sonar. The invoice also shows that the amount that the appellant has collected from the hotel guest and the same is to be given back to ITH. He submits that this is a clear proof that no service was rendered by the appellant. As to the details given in the website, he submits that as a star hotel the appellant has simply stated that they also provide the renting of cab service facilities but as such this was only a convenience which was being provided to the guests. In fact, the cars were being given on the rent-a-cab service basis by ITH only to the appellant. For the services, ITH was directly billing the customer along with Service Tax which was being paid to the Service Tax department by them. Appellant was only acting as a conduit between the guest and ITH recovering the amount and then paying back the same to ITH.

4. Without prejudice, in respect of rent-a-cab service, he submits that there has been no consideration which has been paid by ITH to ITC Sonar for gathering the amount from guests and paying to ITH. Admittedly the amount realized from the guest has been fully passed on to the ITH and the Learner Counsel takes us through the documentary evidence placed before this Tribunal to show that whatever has been realized from the guest has been fully given back to ITH. In the Books of Account of ITC Sonar, there would be contra entry, one entry for having received the amount from the guest and another debit entry showing that the same as being paid back to ITH. The appellant has not retained any part of the amount received from the guest and has passed on the amount received fully to ITH. Admittedly Department has not brought in any evidence that ITH has paid any commission or any other consideration amount to ITC Sonar. He submits that in fact the quantification itself is erroneous since the entire consideration received from the guest has been taken as the

consideration received by ITC Sonar whereas the whole amount was passed on to ITH. The demand, if any, could have been made only if any consideration has been given by ITH to ITC which is not the case here.

5. The Learned Counsel next takes us to the point made by the adjudicating authority on the ground that appellant was an enterprise and different divisions were associate enterprises because of which he has held that even when the service is being provided between two different units of the associate enterprises, the Service Tax is required to be paid. The question of association between two enterprises could arise only if these enterprises are two different persons or legal entities whereas in the present case the hotel division of ITC Ltd and other divisions are all part of the ITC Ltd. Therefore, this is not a case where one associate enterprise has provided service to another associate enterprise.

6. Based on these submissions, he prays that the appeal may be allowed on merits.

7. The Learned Counsel further argues on the ground that the Show Cause Notice issued on 18-10-2011 by invoking the extended period provision is time barred. He submits that the appellant is registered with Service Tax Department and has been discharging the Service Tax and also filing their ST3 Returns regularly. The data with regard to the Rent-A-Cab services provided by ITH has been derived from the Balance Sheet figures only. Similarly, the debit note issued between ITC and other divisions have been also derived from the Balance Sheet figures only. Thus, there is no question of any suppression indulged in by the appellant.

8. In case of Rent-A-Cab service, admittedly the bill was being raised by ITH and they were charging Service Tax and were registered with the Service Tax department. Hence, the Service Tax

was being paid by them. The appellant was simply passing on the amount collected from the guest back to ITH without retaining any amount nor charging any concentration separately from ITH. Therefore, they were under bonafide belief that no Service Tax is required for such transactions.

9. In case of the demand pertaining to associate enterprises, it is clear that other Divisions on whom the debit notes were raised were all part of ITC Ltd and they are all divisions of ITC Ltd and they are not associate enterprises in the sense as it is taken by Income Tax Department. Therefore, the appellants were having bona fide belief that no Service Tax is payable on such debit notes being raised by them. He further takes the stand that in case, if at all any Service Tax was payable on the services of Rent-A-Cab services and associate enterprises transactions, both of them would be eligible for Cenvat Credit by the appellant ITC Sonar. Therefore, this is a matter of revenue neutrality, since they would be eligible to take the Cenvat Credit for the service tax, if any payable. On these counts, he submits that the confirmed demand for the extended period is required to be set aside on account of limitation also.

10. The Learned AR reiterates the findings of the Adjudicating Authority. He submits that the appellant being a star hotel was providing rent-a-cab service which was being advertised in their website clearly stating that this is one of the services being provided by the hotel. He submits that the demand has been quantified based on the receipt of rent-a-cab service amount by the appellant from their guests. Therefore, he justifies the confirmed demand.

11. In respect of the demand on account of associate enterprises, he submits that Circular No. 334/1/2008-TRU dated 29/02/2008 has clarified that when there is a transaction between the associate enterprises, it is to be viewed as transaction between two independent enterprises. Therefore, the Service Tax is required to be

paid on the debit notes raised by the appellant on their associate enterprises.

12. He submits that the details of non-payment of service tax on account of rent-a-cab services as well as on account of their transactions with associate enterprises has come out in open only because of the audit taken up by the department. Therefore, he justifies that the adjudicating authority has correctly invoked the extended period provisions and also justifies the confirmed demands.

13. Heard both sides, perused the appeal papers and the submissions made by both the sides.

14. We find that in the present case, there are two issues to be decided.

(A) rent-a-cab service wherein the demand of Rs. 67,38,390/- has been confirmed.

(B) Debit Notes raised on other associate enterprises wherein the demand of Rs. 28,54,978/- has been confirmed.

15. In respect of Issue (A) above, on account of rent-a-cab services, we find that the appellant is a star hotel providing various facilities to their guests. As a part of their service, they also have advertised in their website menu that the cab can be rented from their hotel for the requirement of the guests. The appellant are actually engaging ITH for providing this service. ITH raises the bill on the guest and shows the details of Service Tax being charged on them. Only when the guest does not pay the bills of ITH directly, the appellant collects the same and keeps it in the books of account and subsequently hands over the same amount to the ITH. From the documentary evidence placed before us, we find that ITC Sonar is not retaining any amount from the amount being given by the guests. The entire amount is being given back by them to ITH. From the bills

raised by ITH, it is seen that they are charging the Service Tax on the guests. This documentary evidence shows clearly that ITC Sonar has not provided any service either to the guests or to ITH. It is seen that ITH has not made any payment towards any consideration to ITC. Even otherwise, the Show Cause notice only alleges providing of renting a cab service to the guests. From the documentary evidence, it gets clarified that the appellant is not providing the rent-a-cab service to the guests. As a hotel, they may be indicating in their website various facilities being provided to the guests on its own. This cannot make the department come to a conclusion that the appellant is providing the rent-a-cab service without any corroborative evidence. We also find force in the point made by the appellant that the consideration is being taken as the entire amount received from the guests whereas the books of account very clearly show that the amount collected so has been paid back to ITH. So far as the adjudicating authority's finding that appellant has not provided the details of Service Tax paid by ITH, we find that this is not required to be proved by the appellant. ITH is already registered as a Service Tax provider and they are responsible for the invoices raised by them wherein service tax charged is being shown. It is for the jurisdictional authorities to take up the matter and proceed against ITH, in case they are collecting the Service Tax under these bills and not remitting the same to the Department. In view of these factual details and documentary evidence shown to us, we find that the confirmed demand of Rs 67,38,390 under the rent-a-cab service is not legally sustainable. Accordingly, we set aside the impugned order to this extent and allow the appeal.

16. Coming to the issue of Debit Notes raised by the appellant, it would be important to go through the Circular 334/1/2008-TRU dated 29 February 2008. The relevant portions are extracted below:-

> *6.4 The term 'associated enterprise' has the same meaning as assigned to it in section 92A of the Income Tax Act, 1961. It is a relative concept i.e. an enterprise is an associated enterprise when it is viewed in relation*

> *to other enterprises. This concept is used in the Income Tax Act for applying transfer pricing provisions. An enterprise which participates, directly or indirectly, or through one or more intermediaries, in the management or control or capital of the other enterprise is considered as associated enterprise. It also covers an enterprise in respect of which one or more persons who participate, directly or indirectly, or through one or more intermediaries, in the management or control or capital of the other enterprise.*
>
> *6.5 Section 92A(2) of the Income Tax Act specifies various situations under which two enterprises shall be deemed to be associated enterprises. Enterprise means a person who is engaged in the provision of any services of any kind. For details, relevant provisions of Income Tax Act may be referred to.*

17. We find that ITC Limited is a Public Limited company incorporated under the Companies Act and it has several divisions running within its fold. When ITC Sonar raises a debit note for the services rendered by them for any other division of ITC, it cannot be said that ITC Sonar is rendering a service to the other division of ITC as an associated enterprise. As has been clarified by the Learned Advocate, there are several divisions within the fold of ITC. When the guests from one division come and stay in ITC Sonar, the relevant charges are debited to that division so as to account for the amount properly under the expenditure of that division. This does not mean that ITC Sonar is realizing this amount from that Division and that this would amount to receipt of consideration towards service provided. At the end of the financial year the details of all the Divisions become part of the Balance Sheet of ITC ltd. Therefore, this would amount to self-service since the service is being provided by one division to another division.

18. We find that in the case of **Precot Mills Ltd. vs CCE Tirupati-2006 (2) STR 495 (Tri.-Bang)**, the Tribunal has held as under:-

5. *We have gone through the records of the case carefully. While dropping the proceedings against the appellants, the Asst. Commissioner in his order dated 27-6-2002 has taken into consideration the following facts :-*

(i) The service provider and the service receiver belong to the same Corporate entity known as Precot Mills Ltd. with a single certificate of incorporation.

(ii) Share holding is for the Corporate body and balance sheet is prepared for the whole entity and not unit-wise.

(iii) For service tax to be leviable, the provider and the client of Management Consultancy Services need to be two separate legal entity as construed from Section 65(72) of the Act which is not the situation in the instant case.

(iv) <u>It is usual practice that for internal accounting purposes and apportioning cost inter unit book adjustment are made in a corporate body. The Commissioner has not accepted the contention of the appellants</u> and held that the internal accounting system of the appellants will not have any bearing on the payment of service tax. In our view, for the leviability of service tax, there should be a service providers and service receiver. As held by the Original authority (Asst. Commissioner) in the present case both the service provider and the service receiver are part of the corporate entity which is known as M/s. Precot Mills Ltd. It was emphasised that the debit note was issued only to evaluate the performance of Dyeing Unit as each unit is a separate profit center. In the case laws cited by the learned Chartered Accountant, the Hon'ble High Court of Calcutta has held that when the club space is allowed to be occupied by any member or his family members or by his guest for a function by constructing a mandap, the club cannot be called as 'mandap keeper' for the purposes of service tax. It was held that principally there should be existence of two sides/entities for having transaction as against consideration. In a member's club, there is no question of two sides. Members and Club both are the same/entity. One may be called as principal when the other may be called as agent, therefore, such transaction in between themselves cannot be recorded as income, sale or service as per applicability of the revenue tax of the country. Hence, members club are not liable to pay service tax in allowing its members to use its space as mandap. The ratio of the above case law is clearly applicable to the present case. M/s. Precot Mills Ltd. is a Corporate entity. <u>It has got various units which function as separate profit centers. When service is rendered by one unit to the other, debit note is raised for the value of service in order to evaluate the performance of a particular unit. Ultimately there is only one Balance sheet for the legal entity for M/s. Precot Mills Ltd. and not for the separate unit. In other words, the appellants, M/s. Precot Mills Ltd. do not receive any valuable consideration for services rendered by one unit of the appellant to the other unit, in view of the fact that the each unit is part of the same legal entity which is the appellant. To put it differently, when one renders service to oneself, as in the present case, there is no question of leviability of service tax.</u> The Asst. Commissioner's order is correct and legal. Hence we do not find any merit in the impugned orders of the Commissioner which ignore the main point that there is no client relationship in the present transactions. In these circumstances, no penalty is leviable. Thus we allow the appeal with consequential relief.

19. The Calcutta Tribunal in the case of **Indian Oil Corporation Ltd Vs. Commissioner of Central Exercise Patna, 2007 (8) STR 527 (Tri.-Calcutta),** has held as under:-

> ***2.*** *Shri Mukesh Kumar, Authorized Representative of the Appellants states that the Department is seeking to levy Service Tax in respect of activities which have been performed by one part of the Appellant Company for another part. He states that no service has been rendered to any other person outside the Company. Hence it is his contention that no Service Tax is payable when no service has been rendered by the Appellants to anyone else. In this connection, he relies on the ratio of the decision in the Precot Mills Ltd. v. CCE, Tirupathi reported in 2006 (2) S.T.R. 495 (Tri- Bang.).*
>
> ***4.*** *After hearing both sides and perusal of the case records and the cited case law, we find that since the appellants have not rendered any service to any other person, their case is squarely covered by the ratio of the cited decision in the case of Precot Mills Ltd. (Supra). Hence, following the ratio of the said decision, we hold that the demand made against the appellants not sustainable in law. Accordingly, we set aside the impugned order and allow the appeal.*

20. The Chennai Tribunal in the case of **General Manager, BSNL Cellular Mobile Services Vs CGST & CX, Tiruchirapalli-2019 (25) GSTL 238 (Tri-Chennai)** has held as under:-

> ***7.*** *From the facts on record, we find that the disputed services pertain to interconnectivity provided by M/s. BSNL, Cellular Mobile Telephone Services (CMTS) Division and M/s. BSNL, appellants herein to their own landline network. Surely, by no stretch of imagination can these two Divisions of M/s. BSNL be termed as two separate service providers for the purposes of the definitions contained in the aforesaid TRAI Regulations that we have just analyzed, etc.*
>
> ***8.1*** *In the present scenario, most, if not every, service provider extends a gamut of connectivity services like landline connectivity, connectivity on mobiles through GSM, CDMA connectivity, data and voice through optical fibre and so on. A service provider like M/s. BSNL may be providing one or more of these connectivities as may be subscribed to by their subscribers. But the important point to be noted is that when the CMTS Division of BSNL is providing interconnectivity to their Landline Division, the service provider BSNL is only providing service to itself. Thus, it becomes a case of service to oneself.*
>
> ***8.3*** *The ratio laid down in Precot Mills Ltd. (supra) has been followed/relied by the Tribunal in a number of subsequent decisions, for e.g. :*
>
> - *Followed in 2007 (8) S.T.R. 527 (Tri. - Kolkata);*
> - *Followed in 2010 (19) S.T.R. 424 (Tri. - Chennai);*
> - *Relied on 2010 (20) S.T.R. 847 (Tri. - Kolkata);*

- *Followed in 2012 (27) S.T.R. 53 (Tri. - Del.);*
- *Relied on 2012 (27) S.T.R. 145 (Tri. - Del.);*
- *Relied on 2013 (30) S.T.R. 502 (Tri. - Del.);*
- *Relied on 2013 (32) S.T.R. 113 (Tri. - Ahmd.);*
- *Relied on 2014 (35) S.T.R. 374 (Tri. - Kolkata);*
- *Followed in 2014 (36) S.T.R. 212 (Tri. - Bang.).*

9. *In view of the discussions hereinabove, we hold that the charges levied by one Division of M/s. BSNL to another and that too by way of debit notes, is only an internal financial adjustment which cannot, by any stretch of imagination, be termed as "Interconnection Usage Charges" or as a taxable service for the purpose of levying Service Tax. This being so, the impugned Orders to the contrary cannot sustain and will require to be set aside in toto, which we hereby do.*

21. We find that the ratio laid down in the above case laws are squarely applicable to the factual matrix of the present case. Accordingly, we hold that the confirmed demand of Rs. 28, 54, 978/- is not legally sustainable. We set aside the impugned order to this extent and allow the appeal.

22. Coming to the arguments rendered by the appellant in respect of time bar, we find that the appellant was registered with the Service Tax department and has been discharging the service tax payments and also they were filing their ST3 returns. Quantification of demand towards rent-a-cab services as well as debit notes raised on associate enterprises have been obtained by the Revenue from the books of accounts maintained by the appellant. We do not see that the appellant has indulged in any suppression in these matters. Further, the appellant could be carrying bonafide belief that no Service Tax is required to be paid on the rent-a-cab service being actually rendered by ITH. In respect of the debit notes raised on other divisions, the appellant should have carried bona fide belief that since they are all part of the Divisions of the same company, there is no need to pay any Service Tax on such activities.

23. We find that the Department has not brought in any documentary evidence or proof to the effect that the appellant has indulged in any suppression so as to evade payment of service tax on these activities. Further, as submitted by the appellant, if service tax was required to be paid on such services, the appellant would be eligible to take the Cenvat Credit which makes the entire exercise as that of revenue neutral. Even on this count, the appellant cannot be fastened with the allegation of suppression with an intent to evade payment of service tax. Therefore, we set aside the confirmed demand for the extended period on account of limitation also.

24. Thus, the appeal stands allowed. The appellant would be eligible for consequential relief, if any, as per law.

(Pronounced in the open court on 17.01.2025)

Sd/-

(R. Muralidhar)
Member (Judicial)

Sd/-

(K. Anpazhakan)
Member (Technical)

Pooja