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

REGIONAL BENCH – COURT NO.2

Service Tax Appeal No. 76198 of 2016

(Arising out of Order-In-Original No. 47-48/S.Tax/Commr/2016 dated 22.03.2016 passed by Commissioner of Central Excise & Service Tax, Ranchi-I)

Mahendra Singh Dhoni
('SHAURY A', H/1(A), Harmu Housing Colony,
Argora, Ranchi-834002)

Appellant

VERSUS

Commr. of Service Tax, Ranchi
(5-A, Main Road, Ranchi-I, 834001)

Respondent

And

Service Tax Appeal No. 76373 of 2016

(Arising out of Order-In-Original No. 47-48/S.Tax/Commr/2016 dated 22.03.2016 passed by Commissioner of Central Excise & Service Tax, Ranchi-I)

Commr. of Service Tax, Ranchi
(5-A, Main Road, Ranchi-I, 834001)

Appellant

VERSUS

Mahendra Singh Dhoni
('SHAURY A', H/1(A), Harmu Housing Colony,
Argora, Ranchi-834002)

Respondent

APPEARANCE :
Mr. Gagan Kedia, Gurpreet Kaur, Ranjit Singh, all Chartered Accountants & Mr. Shamsher Ansari, Advocate for the Appellant/Respondent
Mr P. Das, Authorized Representative for the Respondent/Appellant

CORAM:
HON'BLE MR. R. MURALIDHAR, MEMBER (JUDICIAL)
HON'BLE MR. RAJEEV TANDON, MEMBER (TECHNICAL)

FINAL ORDER NO.75681-75682/2025

Date of Hearing : 09 January 2025
Date of Decision: : 09 January 2025

PER RAJEEV TANDON:

The appellant, Mahendra Singh Dhoni has filed the present appeal assailing the Order-in-Original No. 47-48/S.Tax/Commr/2016 dated dated 31/03/2016 whereby the learned Commissioner has confirmed the Service Tax amount of Rs. 2,16,300/- for the period July 2010 to March 2011 under the category of "Brand Promotion Service" and an amount of Rs. 4,93,05,831/- for the period May 2006 to March 2011 under the category of "Business Auxiliary Service". The Learned Commissioner has apart from seeking interest on the aforesaid amounts so confirmed in terms of Section 75 of the Finance Act, has also imposed certain penalties equivalent to the amount so confirmed under Section 78 of the act ibid; he however has reduced the same to 25% of such penalty imposed in accordance with provisions of law, if it was paid within 30 days of the receipt of the order. The Learned Commissioner further confirmed an amount of Rs. 12,80,102/- under the category of "Brand Promotion Service" for the period April 2011 to March 2012 and an amount of Rs. 3,52,98,171/- for the period April 2011 to March 2012 under the category of "Business Auxiliary Service" besides seeking interest in terms of Section 75 on such amount as well as imposition of penalty under Section 76. A penalty of Rs. 10,000/- in terms of the provisions of Section 77 of the Finance Act was also invoked. The Revenue has also filed cross appeal in the matter for non-invocation of penalty under Section 78 on the appellant.

2. The facts of the case are that M/s Mahendra Singh Dhoni (Shaurya) (MSD) was registered with the department for provisioning of "Business Auxiliary Service". The appellant was issued two Show Cause Notices as referred to in Para 1 above. Vide the first Show Cause Notice, the Department alleged that the appellant had not paid Service Tax amounting to Rs. 7,04,90,545/- for the period May 2006 to March 2011, on the amount received on account of rendering service under the category of "Business Auxiliary Service" and "Business Support Service". The second Show Cause Notice alleged that the appellant had not paid Service Tax of Rs. 1,28,01,018/- and Rs. 3,52,98,171/- on the amount received on account of rendering of service under the category of "Brand Promotion Service" and

"Business Auxiliary Service" respectively during the period May 2006 to March 2011.

3. In the 1st SCN, it was alleged that apart from rendering service of playing cricket, MSD had rendered "Business Support Service" to Indian Premier League (hereinafter referred to as IPL) franchisee - India Cements Limited (hereinafter referred to as ICL), being owner/ of IPL team "Chennai Super Kings", in terms of stipulations of the Indian Premier League Playing Contract dated 11.04.2008 and 20.11.2010 entered into between India Cements Ltd and MSD, but failed to take registration and filing of ST-3 returns for such services rendered. The services identified under the head "Sponsorship, Media & Promotional Activities" of the contract-IPL playing contract covered the following rights given by MSD to ICL (franchisee):

To

(i) photograph, both individually and as member of squad, when involved in activities related to the team.

(ii) film, televise, photograph, identify, record matches & periods ancillary thereto, training, press conference, as set down by franchise/IPL, i.e. to record the player (MSD) & his performance, training, press conference (excepting the player's dressing room)

(iii) use Player Identification

(iv) assist and cooperate with franchisee / IPL partners to maximise their respective promotional benefits from his (MSD) association by making upto ten personal appearance from each contracted season, and by way of granting interviews and photographic opportunities etc.

(v) MSD would not undertake promotional activities or exploit the player identification in any way/through any media to any third party.

In addition the agreement dated 20.10.2010, incorporated the following, that:

(i) ICL shall be entitled to place branding on helmet and other protective equipment.

(ii) MSD to unconditionally and irrevocably assign to ICL for the benefit of ICL, the entire copyright and all other rights of any kind in respect of any appearance or activity made or undertaken and any use of the said noticee's identification as contemplated in the agreement.

4. In the first SCN dated 20.10.11, since no bifurcation was available for the amounts received for promotional activities as well as for playing IPL services matches, the department considered the entire amount received by MSD under the said agreement as taxable value and accordingly it was alleged that MSD did not pay service tax amounting to Rs.2,11,84,714.00 on Rs. 19,29,27,151.00 being the amount received from ICL during April 2008 to March 2011, under Business Support Service.

5. The said SCN also stated that as per Audited Profit & Loss Account, MSD had received endorsement fees from business agents and from clients during May 2006 till March 2011 amounting to Rs.99,48,60,015/-, for the said period but had declared an amount of Rs.49,79,61,380.00 only in the ST-3 returns under Business Auxiliary Service and paid service tax thereupon. Thus it was alleged that MSD had suppressed the taxable amount of Rs.49,68,98,635.00 under the head Business Auxiliary Service which resulted in evasion of Service Tax to the tune of Rs.4,93,05,831.00 under the said category viz. Business Auxiliary Service.

6. It was also alleged that MSD had deliberately suppressed the taxable value to evade service tax on gross receipt. The show cause notice thus proposed recovery of service tax by invoking extended period of limitation under proviso to Section 73(1) of the Finance Act, 1994 along with interest under section 75 of the said Act. The show cause notice also proposed imposition of penalty in terms of section 76, 77 and 78 of the Act ibid for failure to pay service tax and evasion thereof besides contravention of provisions of law by resorting to suppression with intent to evade service tax.

7. MSD was served a second Show Cause notice dated 19.10.2012 (hereinafter referred to as 2nd SCN), wherein it was alleged that the assessee had suppressed service tax to the tune of Rs.4,80,99,189.00 during the period April 2011 to March 2012. Further elaboration of the demand made in the said notice is as under:

Service Category	Description	Amount (Rs.)
Brand Promotion Service (Income from IPL)	Assumed Service Tax on amount received from IPL for playing matches	1,28,01,018.00
Business Auxiliary Service	Assumed Service Tax on amount received from companies towards endorsement rights	3,52,98,171.00
	Total -	**4,80,99,189.00**

8. With regard to the second SCN, the revenue alleged that MSD had rendered Business Support Services to ICL in terms of various clauses of the agreement concerning "Sponsorship, Media and Promotional Activities and Player Restrictions". Besides rendering services of playing cricket matches for its IPL team since no split-up of income earned by MSD from ICL for playing matches and for promotional activities was available, the entire income received from the ICL under the agreement was considered as taxable income under "Brand Promotion Service" for the period April 2011 to March 2012 thereby charging service tax on entire amount of Rs. 12,42,81,728.00 received from ICL, alleging evasion of service tax of Rs. 1,28,01,018.00.

9. The second SCN further stated that MSD had received endorsement fees from business agents and from clients during the period April 2011 till March 2012 amounting to Rs.47,32,86,047.00 as indicated in the Trial Balance Statement and the Ledger for the concerned period but had declared an amount of Rs. 13,05,85,353.00 only in the ST-3 returns under Business Auxiliary Service and paid service tax thereupon. Thus it was alleged that MSD had suppressed the taxable amount of Rs.34,27,00,694.00 under the Business Auxiliary Service which resulted in evasion of Service Tax to the tune of Rs.3,52,98,171.00 under the head Business Auxiliary Service.

10. The appellant in respect of the first Show Cause Notice submitted that they had not rendered any service to India Cement Limited as alleged in the Show Cause Notice and contended that the agreement between ICL and M. S. Dhoni dated 11/06/2008 was for playing in IPL matches as a team member for the team owned by ICL. The Learned Advocate also drew our attention to the title of the agreement that reads as "India Premier League Playing Contract". He contends that as per the financial statements, it was evident that the amount received by the appellant was for playing cricket and therefore, cannot be considered as rendering of a taxable service and that no separate fee/remuneration was received by the appellant for rendering any taxable service. He concluded that the Prize Money being not a fee or remuneration for the rendition of service would certainly not be taxable. As for the payments received from Mindscapes Maestros, the learned advocate submitted that it was in response to the Agreement entered into by them with Maestros. He further submitted that they had not received any payment from D. B. Corp. Ltd. as all payments were made to Midscapes Maestros and not to the appellant. They further stated that the said amounts were duly accounted for by Mindscapes Maestros and service tax as due thereon was already paid.

11. Likewise, in respect of other payments on account of brand promotion/advertising, as said to be received from Lafarge India, it was asserted that all the payments were made to M/s. Gameplan Sports Pvt. Ltd. and not to the appellant. Pointing out that prior to 01/07/2011, the liability of service tax arose only on receipt basis and not on accrual basis and as the appellant had not received any payment from Lafarge, hence no tax would be levied on the appellant for such amount received by M/s. Gameplan Sports Pvt. Ltd. from Lafarge. Further as for the payment allegedly received from Nutrine Confectionery Company, the Learned Advocate acknowledged receipt of payment of Rs. 57,08,025/- directly by the appellant by way of a cheque and stated that however by mistake the company had entered the same amount and the same cheque number three times in the said statement. He further submitted that all other payments were made to the agency that is Mindscape Maestros. Service tax and education cess for the direct payment received by them was paid on

29.03.2010. For the expenditure incurred by Dabur, the Learned Advocate inviting reference to Rule 5 of the Service Tax (Determination of Value) Rules, 2006 (*"where any expenditure or costs are incurred by the service provider in the course of providing taxable services, all such expenditure or costs shall be treated as a consideration….."*) submitted that accordingly, if the service provider incurred any expenditure and claimed re-imbursement of such expenditure then such expenditure shall be included as a in consideration. As in the present case, the appellant had not incurred any such expenditure nor claimed such expenditure from the recipient of service, the same was not liable to be taxed. In support of his contention he invited reference to a communication from Dabur vide letter dated 02/01/2010. For payments from Aircel, the appellant submitted that it was clear from the bills raised by Midscapes Maestros that the payments was made to them and no payments were received directly by the appellant. As regards payment received from Parle Products Pvt. Ltd., it was the contention of the appellant that all bills were raised by Mindscapes Maestros as well as payments were made to them and no payment was made to the appellant. With regard to travel expenses, it was submitted that M/s. Parle Products Ltd. were directly involved in arranging the travel and no reimbursements were made to the appellant. For payments received from Reebok, the appellant had paid service tax due on the same. With regard to payment received from NDTV, reference was invited to NDTV's letter dated 11/11/2010 pointing out that no payments were made directly to the appellant and all such payments were made to M/s Mindscapes Maestro. Similarly with regard to Maxx, it was contended that the appellant had discharged Service Tax due thereon and similar was the position with respect to payments received from Purple People Entertainment Pvt. Ltd. As per letter dated 03.08.2010 of Rhiti Sports Management (P) Ltd. (agent of MSD), it was confirmed by them that they had deposited Service Tax due on the payments made to the appellant. It was likewise contended with respect to Gameplan, pointing out that tax due had been duly discharged.

12. Reflecting on the evolution of IPL and the system of the "Franchisees" for organizing and management of various cricket teams, the learned CA for the appellants stated that as per the terms

of the franchise agreement entered into between ICL and the BCCI-IPL, they were providing certain services to each other in relation to the organization and management of the tournament. The appellant, as a member of the team, was not concerned with such matters. Inviting reference to the highlights of the agreement as contended in Para 4.1 of the Show Cause Notice, they submitted that the player was employed by ICL for the period of the tournament for playing IPL matches. A fixed remuneration for participation in the tournament as a player was received by the appellant. Incidental to the participation as a player, ICL had also laid down certain conditions, such as:

1) To wear the team clothing strictly in the form supplied by the ICL.

2) ICL owned the right of photograph of the player/appellant, both individually and as well as a member of the team/squad.

3) IPL was free to film, televise, photograph, identify and or otherwise record the performance of the appellant during the course of the match etc.

13. Based on the agreement entered into between the appellant and ICL and the agreement entered into between ICL and other sponsors of the team, the SCN alleges that India Cements were serving the business or commercial interest of the sponsors through the players who were made to take part in such promotional activities. It is alleged by the Revenue, that ICL executed sponsorship agreements with other sponsors giving them official sponsorship rights. The promotional activities contended in clause 4 and 5 of the agreements supra (entered between ICL and players) were nothing but akin to promotion or marketing of the logo/brands/marks/activities of the franchisees/sponsors.

14. Countering the charge, the appellant submitted that in terms of the Contract, if a player failed to take part in the promotional or endorsement activities or failed to comply with the agreement, then the franchisee was at liberty to reduce the player fee by 5% on each occasion. In view of the aforesaid, it is the contention of the appellant that he only played for ICL as per the Player Agreement while the service provided by him to India Cements for promoting or marketing of the logo/brands/marks of the Franchisee/Sponsors and taking part

in team endorsement events/other such activities would appropriately fall within the ambit of Support Services for Business or Commerce. When playing for the team, it is incumbent upon the player who is bound by the terms of the contract to abide by the terms and conditions as set out in the contractual agreement and participate in activities so indicated.

15. The Ld. Authorized Representative for the Revenue on the other hand supports the findings of the learned Commissioner and reiterates the same.

16. We note from records that though the appellant entered into an agreement with IPL for participation as a cricket player, indeed he was employed by ICL for the period of IPL tournament as a contract employee. No part of the appellant's remuneration, is indicated in the contract as being towards the above mentioned rights which his employers retained at the time of the engagement. Nowhere the agreement between ICL and the appellant speaks of any payment for the promotional activities that have been rendered by the appellant. Also the agreement did not impose any condition that the remuneration was dependent on or related to any of the rights as specified by the employer in the agreement. Prescribing of specific uniform for its employees would obviously be the prerogative of the employer and part of overall discipline. We therefore find merit in the submission that the appellant was thus required to subject himself to the employer's will and was bound thereto as expected of an employee and that he was not rendering any service to his employers apart from playing cricket for his employer. This alone was the criteria for fixation of the remuneration. The appellant's plea that the allegation of rendering Business Support Service in terms of Section 64 (104c) of Finance Act, 1994 for M/s. ICL does not therefore flow from the contractual agreement.

For a ready read, Support Services of Business or Commerce as per Finance Act, 1994 is defined 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 assistance for marketing, formulation of customer service and pricing policies, infrastructural support service 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".

It can be noted from the above that none of the variety of acts/activities as indicated in the definition actually come into play in the matter.

17. As for Board's Circular No. 334/4/2000-TRU dated 28.2.2006, the appellant had contended that the intention thereof, was to tax services which were out-sourced by an organization engaged in the activities of business or commerce while the person rendering the Business Support Service and the person receiving the service were independent entities having a principal to principal relationship between them. In the present case, it is not evidenced from records that the appellant had done anything to discharge Business Support Service as defined supra for ICL as the appellant was only engaged under the contract on a fixed remuneration for playing of cricket.

18. As for the "Brand Promotion Service" the same was not taxable up to 30th June 2011, therefore, it cannot be considered that the appellant rendered the said service during the period 2008-09 and 2009-10 and upto 30th June 2011. Playing for the team cannot be considered as providing Business Support Service. In connection with the tax liability for the period 1st July 2010 to 31st July 2011, Rs. 2,10,00,000/- were paid to the appellant as player fee/prize money. As the contract did not indicate any separate amount towards "Promotional Activities", there is no reason to understand the contract to mean as incorporating brand promotion activities as well. Mere requirement to participate in brand promotion of the Franchisee partners would not fall within the scope of Section 67 (1)(3) of the Finance Act, 1994 for computation of the value of the taxable service

which would be required to be determined in accordance with the manner as prescribed under the Service Tax (Determination of Value) Rules 2006, and that there was no such determination by the authorities in the matter.

19. In order to analyse the matter in its complete perspective, it would be befitting if the various issues involved are considered separately. The first issue that is also common to the two Show Cause notice is regarding levy of Brand Endorsement charges received by the appellant under the guise of Business Auxiliary Charges/Brand Promotion Charges. It is indicated in foregoing paras the appellant's contention has been that the said charges received by him directly as a component of BAS/BPS, were liable to tax and appropriate tax due thereon was in effect discharged by the appellant either on the basis of cash receipt (upto 31.3.2011) and thereafter on accrual basis and that tax was paid after taking into account the amount of tax liability discharged by his agents as indicated in previous paras. The fact of appellant having discharged tax on amounts directly received by him as aforestated is not disputed by the Revenue. In this regard the appellant has also taken us through the certified statement copies enclosed as part of the paper book, of Rithi Sports Management Pvt. Ltd. and the various schedules pertaining to Mindscapes Maestros, DB Corp. ltd. Lafarge India, Nutrine Confectionery Company, Dabur, Aircel, Parle Products Pvt. Ltd. NDTV, MAXX and Purple People Entertainment Pvt. Ltd, who acted as agents of the appellant. We note that the ld. Adjudicating authority failed to take note of the same while going about the confirmation of the demand. It is also clear from records that the demand was worked out on the basis of gross revenue figures as indicated in the Profit & Loss Accounts of the appellant, without taking note of the fact that the P & L account was drawn on accrual basis, whereas tax liability Bill 31.3.2011 was on cash receipt basis. The impact analysis of this difference ought to have been taken note of by the authorities while working out the demand and as ascertained from the balance sheet, the figures pertaining to the debtors. We also note that a fairly large amount of tax that was paid by the appellant's agents on his behalf and as presented before us in Annexure XI of the paper book (page 284 onwards) (incidentally this is a communication of the department

dated 30/10/2013), were not taken note of by the lower authority, though, these details were well available with the adjudicating authority at the time of adjudication. In *Qui Facit Per Alium Facit Per Se*, - a common legal principle to state that one who acts through another actually acts himself, there remains no doubt that tax as discharged by the various agents would need to be taken note of, for arriving at the total tax liability, if any on the appellant. As elaborately explained before us, that tax was duly discharged either by the appellant himself or on his behalf by the agent, we are of the view that the demand raised towards Brand Endorsement, as below:-

Ist SCN- Rs. 4,93,05,83/-
IInd SCN- Rs. 3,52,98,171/-

does not survive and is required to be quashed.

20. Moreover, the appellant has also tendered during the course of the hearing, tabular statements as incorporated below that indicate that upon reconciliation of all payments done, no demand on the appellant could survive in the matter. These tables are as below:

Table-I

Description	**Amount (Rs.)**	**Reference**
Value on which Demand created by Respondent (P&L Acct minus ST-3)	49,68,98,635	Pg 29 – point 11
Less: Amount confirmed by RITHI on which service tax is **paid by RITHI as an AGENT on behalf of Dhoni** *(letter of Delhi Commissionerate)*	(31,92,33,465)	Pg 284 / Pg 33
Add: RITHI's share @ 7% (included in above)	2,23,46,343	Pg 284
BALANCE	**20,00,11,513**	
Less: Adjustments - Amount billed, But remaining due for the period 01.04.2006 to 31.03.2011	(20,03,62,978)	Pg 31 + Pg 281 & 278 (B.Sheet)
BALANCE: Excess	**(351,465)**	

Table-II

Description	**Amount(Rs.)**	**Reference**
Income as per P&L A/c. (undisputed fact) - all amounts taxable as per newly introduced Accrual System for payment of Service tax. [A]	47,32,86,047	Pg 237 – point 14 (OIO)
Add: Adjustment for Debtors who were billed in previous periods & remained Due till 31.03.2011 - BUT paid during current year. Hence Tax is payable now upon its receipt. **[B]** *[Opening Debtors less Closing Drs]* *[20,55,51,008 – 2,37,40,477]*	18,18,10,531	Pg 284 Pg 282/283
TOTAL: Amount Chargeable to Service Tax [C]	**65,50,96,578**	**[A+B]**
Less: Amount confirmed by RITHI on which service tax is paid by **RITHI as an AGENT on behalf of Dhoni** (letter of Delhi Commissionerate) [D]	(57,86,30,079)	Pg 284 / Pg 33
Add: RITHI's share @ 7% (included in above) **[E]**	4,05,04,105	Pg 284
BALANCE AMOUNT ON WHICH SERVICE TAX IS TO BE PAID BY DHONI [F]	11,69,70,605	[C-D+E]
Less: Amount Shown in ST-03 Return under category 'BAS' (Undisputed fact) [G]	**13,05,85,383**	Pg 237 (OIO
BALANCE: Excess Amount (Taxable Value) reported and paid in ST-3 [H]	**(1,36,14,778)**	[F-G]
Less: 'Brand Promotion Services' (1st Issue-2nd SCN) inadvertently included in 'Business Auxiliary Services' in the ST-3 [I]	**1,36,00,000**	
Balance: Excess reported and paid in ST-3	**(14,778)**	**[H-I]**

The aforesaid statistics only goes into buttressing our aforesaid findings in the matter.

21. As for the revenue's case for levy of service tax on IPL Playing Fee attributing the same as rendering of Business Support Service, it has been placed on record that tax due thereon was admitted and paid and was so indicated in their rejoinder reply dt. 2.1.2012, whereby the appellant self-assessed to tax on the said service as Brand Promotion Service and thereafter paid the tax @ 10% of the value of Playing Fees vide challans dt. 31.01.2012 & 13.2.2012 along with interest as applicable. We note that this amount does not find a mention as having been appropriated in the impugned order. Upon a query from the Bench, the ld. CA for the appellant undertakes not to claim refund of the said amount paid. In view of the fact that the total demand on this count of Rs. 14,96,402 (Ist SCN-1,16,300, IInd SCN-12,80,102/-) stands paid along with interest, there is no merit in sustaining the same. Likewise, for the IInd SCN, we note that the appellant having admitted his liability to tax under BPS for the amount directly received by him and having paid the same vide challan dated 22.12.11 alongwith interest, the said demand would no more survive. It is also clarified from records that the demand of Rs. 12,80,102/- as worked out by the revenue was inclusive of Match Winning Bonus. This amount in our view has no bearing with rendering of service and needs to be excluded. Accordingly, tax @ 10% of Player Fee of Rs. 11.50 Cr, exclusive of Bonus is leviable to tax which as per challans as indicated above stands discharged. Thus no liability survives on this count as well.

22. Moreover, in the light of statutory definitions of the two taxable services and clarifications given by C.B.E.C. with regard to their scope, it transpires that "Business Support Service", is an outsourced service which otherwise is required to be taken care of by the business entity itself. Thus, a provider of "Business Support Service" renders direct assistance to a service recipient in his principal business/ commercial activity. However, in the present matter, as evident from the contracts between the two parties, no such direct assistance as contemplated in the definition of "Business Support

Service", has been provided by MSD to ICL or to their partners in their respective business activities. Here, it may also be mentioned that Para 4.1 of the two contracts, specifically mention that *"the right to photograph, film, televise, training, press conference and use of player identification in connection with promotion through any means shall not be so as to imply any individual endorsement by MSD of any person, product or service"*. Stemming from such provisions of the contracts, the services rendered by the appellant to ICL through promotional activities bear no direct reference to any specific product or services of ICL. Such services rendered by the appellant related to promotional activities are merely intended to establish goodwill or adding value to the brand of ICL without any direct link with any particular product or service of the latter. At best it could be so said that intended impression that it seeks to create in the minds of people at large is that the products and services of brand of ICL, were of the level of excellence comparable to that of MSD.

23. It also appears to us that in order to overcome limitation, the revenue has made sweeping generalizations alleging suppression, mis-statement, fraud etc. with intent to evade payment of duty. We however find no basis to sustain this charge of the revenue. It is settled law that to invoke these ingredients, it is for the authorities to indicate specifics to prove their case. In the absence of no such evidence forthcoming, we are afraid, any allegation invoking such strong and harsh measures regarding fraud, suppression, misdeclaration is clearly unsustainable and there appears no intent on part of the appellant to evade payment of duty, who has himself paid tax as due along with interest. Under the circumstances, we are of the view that no case is made out in the matter to sustain the said allegations and we dismiss the same.

24. Before concluding we would also like to refer to the case of **Katrina R. Turcotte** vs. **Commr. of Service Tax, Mumbai-I, 2013 (31) S.T.R. 670 (Tri.-Ahmd.)** where the Tribunal had an occasion to deal with a similar instance of a celebrity artist being charged for service tax evasion, for rendering of BAS, wherein the tax was complied and paid through the aegis of agents (as included within the term "assessee" (Sec. 65 (7)). Material para of the said order is extracted below:-

> ***6.*** *In this case, the appellant has provided the service for promotion of product by agreeing as model herself for advertisement films, TV commercials, still photographing, footage, press advertisement, outdoor, packaging and sales material etc. The revenue is of the view that as the appellant is engaged in the activity of promoting/marketing or sales of the product manufactured by her client etc., therefore, the said activity falls under 'Business Auxiliary Service'. The liability of service tax has not been disputed by the appellant. The appellant's contention is that appellant has appointed M/s. Matrix as their agent to receive payment on behalf of the appellant from the clients and thereafter discharge the service tax liability on the above activity. These facts are also not in dispute. As per the agreements, the payments are to be made by the clients in the name of M/s. Matrix and M/s. Matrix has to discharge service tax liability, thereafter the balance amount was to be paid to the appellant. In this set of facts, service tax liability has been discharged by Matrix on the above said activity cannot be denied merely on the ground that it has paid under Advertisement Agency service. As M/s. Matrix has paid the service tax under the category of Advertisement Agency service that does not mean that M/s. Matrix has not paid service tax on behalf of the appellant. By mere paying the service tax liability under wrong head does not mean that service tax liability has not been discharged. The allegation of the revenue that service has been rendered by appellant but has not discharged the service tax liability is not sustainable as per Section 65(7) of the Finance Act, wherein the 'assessee' means a person liable to pay service tax and includes his agent. In this case appellant has appointed M/s. Matrix as her agent to discharge her service tax liability on her behalf and same has been discharged by M/s. Matrix.*

25. In the case of **Zaheerkhan B. Khan** vs. **Commr. of Service Tax, Mumbai (2014 (33) STR 75T)** under similar circumstances wherein for the Promotional services rendered by principals for which service tax was discharged by agents, who were appointed for purpose of negotiations with the corporates, the tribunal inviting reference to Section 65 (7) of the Finance Act, 1994, held the same to be a satisfactory compliance in law and fulfillment of the tax liability due.

26. In view of our discussions above, the order of the lower authority is not maintainable in law and is therefore set aside. Service Tax as paid voluntarily by the appellant during the course of investigation/adjudication proceedings is directed to be appropriated. The appeal filed by the appellant is allowed while the appeal filed by the Revenue is dismissed.

(Operative Part of the order was pronounced in the open court.)

Sd/

(R. Muralidhar)
Member (Judicial)

Sd/

(Rajeev Tandon)
Member (Technical)

SB