CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, MUMBAI
WEST ZONAL BENCH
COURT No.

Appeal No. ST/89996/2014

(Arising out of Order-in-Original No. 64-66/ST-II/RS/2014 dated 28.08.2014 passed by Commissioner of Service Tax-II, Mumbai)

Phonographic Performance Ltd. **Appellant**
Crescent Towers, 7th floor,
B/68, Veera Estate,
Opp. New Link Road,
Andheri (West)
Mumbai 400 053

Vs.

Commissioner of ST, Mumbai-II **Respondent**
4th floor, New Central Excise Bldg.,
M.K. Road, Churchgate,
Mumbai 400 020.

WITH

Appeal No. ST/85748/2015

(Arising out of Order-in-Original No. 08/ST-VI/RS/2014 dated 31.12.2014 passed by Commissioner of Service Tax-II, Mumbai)

Phonographic Performance Ltd. **Appellant**
Crescent Towers, 7th floor,
B/68, Veera Estate,
Opp. New Link Road,
Andheri (West)
Mumbai 400 053

Vs.

Commissioner of ST, Mumbai-II **Respondent**
4th floor, New Central Excise Bldg.,
M.K. Road, Churchgate,
Mumbai 400 020.

Appearance:

Shri M.H. Patil, Advocate for the Appellant
Shri M.K. Sarangi, Authorised Representative for the Respondent

CORAM:

Hon'ble Mr. Sanjiv Srivastava, Member (Technical)
Hon'ble Dr. Suvendu Kumar Pati, Member (Judicial)

FINAL ORDER NO. **A/86194-86195/2019**

Date of Hearing: 04.04.2019
Date of Decision: 04.04.2019

PER: SANJIV SRIVASTAVA

These appeals are directed against orders in original No.64-66/ST-II/RS/2014 dated 28.08.2014 and No. 08/ST-VI/RS/2014 dated 31.12.2014 of Commissioner of Service Tax – II, Mumbai. The Commissioner has held as follows:

Order in Original No 64-66/ST-II/RS/ 2014 dated 28.08.2014

"23.1 I confirm in terms of Section 73(2) of the Finance Act, 1994, the demand of Service Tax totally amounting to Rs 8,32,17,806/- (Rupees Eight Crore Thirty Two Lakhs Seventeen Thousand Eight Hundred and Six only) pertaining to the period 2010-11, 2011-12 and 2012-13 made in the three Show Cause Notice dated 11.10.2011, 04.09.2012 and 17.02.2014 respectively under Section 73(1) of the Finance Act, 1994 as Service Tax payable by recoverable from M/s Phonographic Performance Ltd., Andheri (West) Mumbai 400053.

23.2 I order recovery of interest at the appropriate rate on the amount confirmed at para 23.1 above from the due date9s0 under provisions of Section 75 of the Finance Act, 1994 from M/s Phonographic Performance Ltd., Andheri (West) Mumbai 400053.

23.2 I impose penalty on M/s Phonographic Performance Ltd., Andheri (West) Mumbai 400053 under Section 76 of the Finance Act, 1994 as it existed at the material time which shall be

i. *Rs 200/- every day during which such failure continues or at the rate of 2 (two) percent of such tax per month, whichever is higher, starting from the first day after the due date till the date of actual payment of the outstanding amount of Service Tax for the period from April 2010 to 07.04.2011 subject to a maximum of total Service Tax payable but not paid for the said period.*

ii. Rs 100/- every day during which such failure continues or at the rate of 1 (two) percent of such tax per month, whichever is higher, starting from the first day after the due date till the date of actual payment of the outstanding amount of Service Tax for the period from 08.04.2011 to 31.03.2013 subject to a maximum of total Service Tax payable but not paid for the said period.

23.4 I impose a penalty of Rs 10,000 (Rupees Ten thousand Only) under Section 77 of the Finance Act, 1994, on M/s Phonographic Performance Ltd Andheri (West) Mumbai 400053.

23.5 M/s Phonographic Performance Ltd Andheri (West) Mumbai 400053. Shall also b liable to appropriate late fee at the rate specified in Rule 7C of the Service Tax Rules, 1994 subject to a maximum of Rs 20,000/- each return specified under Section 70 of the Finance Act, 1994 for their failure to file proper returns covering the period April 2010 to March 2013 to the date of filing of the ST-3 Returns."

Order in Original No 08/ST-VI/RS/2014 dated 31.12.2014

"15.1 I confirm the demand of Service Tax totally amounting to Rs.4,20,53,684/- (Rupees Four Crore Twenty Lakh Fifty Three Thousand Six Hundred Eighty Four only), in terms of Section 73(2) of the Finance Act, 1994.

15.2 I order recovery of interest at the appropriate rate, on the amount confirmed at para 15.1 above, under the provisions of Section 75 of the Finance Act, 1994.

15.3 I impose penalty on M/s. Phonographic Performance Ltd., Andheri (West), Mumbai-400 053, under Section 76 of the Finance Act, 1944, which shall be Rs.100/- every day during which such failure continues or at the rate of 1 (one) percent of such tax per month, whichever is higher, starting from the first day after the due date till the date of actual payment of the outstanding amount of Service Tax *for the period from 01.04.2013 to 31.03.2014 subje3ct to a maximum of 50% of the Service Tax payable but not paid for the said period.*

15.4 I impose a penalty of Rs.10,000/- (Rupees Ten Thousand only) under Section 77 of the Finance Act, 1994, on M/s. Phonographic Performance Ltd., Andheri (West), Mumbai-400 053.

15.5 M/s. Phonographic Performance Ltd., Andheri (West), Mumbai-400 053, shall also be liable to pay appropriate late fee at the rate specified in Rule 7C of the Service Tax Rules, 1994 subject to a maximum of Rs.20,000/- each return specified under section 70 of the Finance Act, 1994, for their failure to file periodical returns covering the period April 2013 to March 2014, till the date of filing of the ST-3 Returns."

2.1 Appellants have been created/ formed in furtherance of objectives laid down by under Section 33 of the Copyright Act, 1957. As per the certificate of Registration issued by the Registrar of copyright they are permitted to commence and carry on copyright business in sound recording.

2.2 As per the provision of Section (25a) and Section 65 (105)9zzze) of the Finance act, 1994, revenue was of the view that appellants are providing services that fall under this taxable category i.e. *"Club or Association Service".* A proportionate amount of income generated as license fee or royalty for the consideration for the service and the balance was passed on to the members. The service so rendered by appellants appeared to be in the nature of facilities or advantages extended to their member by way of privilege of conducting their business of licensing of copyright.

2.3 Based on the above facts three show cause notices as detailed below have been issued to the Appellant;

Show Cause Notice No	Date	Period	Amount 'Rs

ST/HQ Prev/295/2006 (1)	13.10.2008	16.06.2005 to 30.06.2008	27869195
ST/Dn.IV/Phonographic/SCN/157/09/ST/HQ. Prev/295/2006(1)	22.10.2009	01.07.2008 to 31.03.2009	19566744
V-Adj/ST-ii/PPL/15-280/2010	28.09.2010	01.04.2009 to 31.03.2010	19572650

These Show Cause Notices were adjudicated by the Commissioner Service Tax–II Mumbai vide order No 21 to 23/ST-II/KKS/2010 dt 31.11.2010. This order has been accepted by the Committee of Chief Commissioners as communicated vide letter dated F No IV/ 198-Rev/CCO/MCX/ST-II/2010 dated 31.01.2011.

2.4 Since the appellants were not following the procedural aspect and did not pay the service tax to be paid in respect of taxable service rendered by them during the subsequent periods enquiries were conducted. Appellants responded that they were not required to pay the service tax and the order of Commissioner have been challenged by them before CESTAT.

2.5 Thereafter Show Cause Notices as detailed below were issued to the appellant demanding Service Tax from them for the subsequent periods:

Show Cause Notice No	Date	Period	Amount 'Rs
V-Adj/ST-II/PPL/15-92/2011	11.10.2011	01.04.2010 to 31.03.2011	23361312
ST/HQ Prev/295/2006 (1)	04.09.2012	01.04.2011 to 31.03.2012	25451255
ST/Dn IV/Gr VIII/Phono/23/2014	17.03.2014	01.04.2012 to 31.03.2013	34405239
	24.09.2014	01.04.2013 to 01.04.2014	42053684

2.6 The show cause notices mentioned in para 2.5 have been adjudicated by the Commissioner vide impugned order. The details of the orders are mentioned in para 1, supra.

2.7 Aggrieved by the order of Commissioner Appellants have preferred this appeal.

3.1 In their appeal appellants have assailed the order of Commissioner stating that-

i. They had requested the commissioner to keep the show cause notice in abeyance till the appeal filed by them against the decision of Commissioner for the earlier period before CESTAT is disposed off. But Commissioner ahs ignoring their request proceed to decide the matter.

ii. They were not a Club or Association as contemplated under the Finance Act, 1994. They are a copyright society as per the provisions of Copyright Act and duly registered under the said Act. The services rendered by them is administration of copyright and they receive the consideration for the same. The copyright services have been made taxable with effect from 1-07-201 under category defined by 65(105)(zzzzt). Entire consideration received by them for administration of copyright is subject to tax under that category and they pay tax at the applicable rate. Thus the demand of tax under category of Club or Association Service is bad in law.

iii. Commissioner failed to appreciate the nature of activities undertaken by them and also the provisions of Copyright Act. The activity of administering copyright is specifically covered under the category of **"Copyright Services".** The consideration received by the appellants towards the provision of the said service has also been taxed, in toto, under the said category.

iv. As per the provisions of Copyright Act, 1957 the copyright society is enjoined to collect fees in pursuance of issue of license and to distribute such fees among the owners of rights after making deduction for its expenses. The deductions of expenses of the society while distributing the fees to its members is a part and parcel of the gross amount received towards license fees/ royalty for the usage of sound recordings by the licensees and the said gross amount in its entirety has been subjected to service tax under the category of copyright services. The amount retained as expenses from the licenses cannot be construed as either subscription or any other amount paid by the members of the Appellants, especially when the members are not required to make any payments to the appellants.

v. It is settled law that introduction of a new entry clearly shows that the coverage in the new entry was not covered by the earlier entries. [SAP India Pvt Ltd [2011 (21) STR 303 (T)], Indian National Shipowners Association {2009 (14) STR 289 (Bom)], BCCI [2007 (7) STR 384 (T Mum)] & MRF Ltd [2006 (3) STR 434 (T-Chennai)]

vi. Hon'ble Tribunal has in case of M/s Federation of Indian Chambers of commerce and Industry [2014-TIOL-701-CESTAT-Del] has in similar cases held that the activities undertaken by the Chamber was outside the ambit of Club and Association service.

vii. Commissioner has ignored the binding precedence n case of Sports Club of Gujarat Ltd [2013 (31) STR 645 (Guj)], Ranchi Club Ltd [2012 (26) STR 401 (Jhar)]

viii. Order of Commissioner traverses beyond the scope of Show Cause Notice and needs to be set aside following the decisions in case of {Reckitt and Colman of India Ltd [1996 (88) ELT 641 (SC)], Prince Khadi Woollen Handloom Production Cooperative Industrial society [1996 (88) ELT 637 9SC)]

ix. The Commissioner has erred not in allowing the cum tax benefit while determining the taxable value of the service provided.

x. Since the tax demand do not survive the interest demand will too fail.

xi. Since there was no failure on their part in filing the Service Tax returns or default in payment of tax the penalties imposed under Section 76 and 77 are not sustainable. Also the fees levied in terms of Rule 7C of Service Tax Rules, 1994 read with Section 70 is also not sustainable.

4.1 We have heard Shri M H Patil, Advocate for the Appellants and Shri M K Sarangi, Additional Commissioner, Authorized Representative for the Revenue.

4.2 Arguing for the Appellants, learned Counsel submitted that-

i. Order of the Commissioner for the earlier period in their own case been set aside by tribunal as has been reported in [2017 (3) GSTL 523 (T-Mum)]

ii. Since the entire demand is based on the facts which are identical to the facts considered by the tribunal while setting aside the earlier order of Commissioner for earlier this demand should also be set aside.

4.3 arguing for the revenue learned authorized representative, sought to distinguish the tribunal order and stated that this order is not applicable to the facts of instant case for following reasons-

i. As per the agreement between the owners and the society, the owners have agreed to avail the services of appellant as per tariff specified therein. As per provision of Section 33 of the Act, the Owner in his individual capacity continue to have the right to grant license in respect of his own work. Hence the conclusion that it is legal mandate thus ceases to be service is not correct.

ii. As per the decision in case of Deposit Insurance & Credit Guarantee Corpn [2015-TIOL-629-CESTAT-Mum], the issue of taking deposit insurance as per statutory mandate being sovereign/ statutory function not amenable to service tax was rejected, while holding that service tax is leviable.

iii. Merely because the appellants have sought registration under Section 33 of Copyright Act, 1957, they cannot be said to be constituted under the said Act.

iv. Appellant is discharging service tax under the category of 'Copyright Service' on behalf of the owner and is not the service provider for the said service. Even as per the appellants themselves owners have authorized by assignment to deal with copyright, and tariff for providing the service is also specified. Thus the conclusion that appellant is not providing service to music companies cannot be faulted with. Thus the finding that the appellants were providing club or association Services to the owner of copyrights.

v. As per the concept of Negative List introduced post 1st July 2012 any service unless in the negative list or specifically exempted is amenable to service tax.

vi. In case of Calcutta Club [2017 (5) SCC 356] matter has been referred to larger bench for three questions including "Whether decision in Young Men Association on doctrine of mutuality still hold the field even after 46th Amendment to Article 366 (29A).

vii. Reliance is also placed on following decisions;-

- o Patel Airfreight [2017-TIOL-171-CESTAT-Del]
- o Vijai Television [2018-TIOL-2897-Tri-Mad]
- o D Pauls Consumer Benefit Ltd [2017-52-STR-429-T-Del]
- o Govan Travels [2018 (9) GSTL 268 9T-Del)]

5.1 We have considered the impugned order with submissions made in appeal and submissions made during the course of arguments.

5.2 There is no dispute about the fact the issue under consideration was subject matter in appeal earlier filed by the appellant against order of the Commissioner confirming the demand against the appellant on the same grounds for earlier period. The fact that issue has arisen in view of the earlier order of the Commissioner, is a fact recorded in the impugned order itself. The Appeal filed by the Appellants against the order of Commissioner for earlier period has been allowed by the Tribunal as per the order reported at [2017 (3) GSTL 523 (T-Mum)]. In that decision tribunal held as follows:

"3. M/s. Indian Performing Rights Society Ltd. is likewise a company limited by guarantee incorporated under the Companies Act, 1956 and whose members are writers, publishers, music composers and authors owning copyright in musical works. Membership is conferred upon payment of membership fee as prescribed and members, by deed, assign the performing and mechanical rights in music and literary works to the society which, thereafter, exclusively belong to the society. As consideration, the owner of the copyright receives payments from an allocation made by the society. The society is registered under Section 33 of Copyright Act, 1957 as 'copyright society' and permits the rights assigned to it through license agreements to be used by entities such as restaurants, malls, hotels, airlines, etc. These blanket licenses are issued for a prescribed period. In the disposition of its earnings, the society deducts its administrative expenditure and may retain some part for specific purposes as well as in the reserve fund before distributing the rest. The society was issued with a show cause notice demanding ` 76,90,150 as tax for providing 'club or association service' for the period from 16th June, 2005 to 31st March, 2008. Two more

show cause notices for 2008-09 demanding ` 50,92,097 and for 2009-10 demanding ` 55,79,902 were also issued. The total liability sought to be fastened on the appellant was ` 1,83,62,149.

4. The membership fees received by M/s. Indian Performing Rights Society for the period in dispute is ` 4,37,797. The administrative fees expenses deducted by them from the fees obtained for assigning copyrights by license given is ` 34,15,540.

5. The appeal of Revenue pertains only to imposition of penalty on M/s. Phonographic Performance Ltd. whereas the appeals of the assessees challenge the taxability itself.

6. The issue in dispute pertaining to the assessees is the taxability of the amount received and/or retained by them towards expenditure as consideration for rendering of 'club or association service'. Before proceeding further, it is necessary to recall the taxable service itself, i.e.,

'65(zzze) - to its members by any club or association in relation to provision of services, facilities or advantages for a subscription or any other amount'

and the definition of the service, i.e.,

'65(25aa) - "club or association" means any person or body of persons providing services, facilities or advantages, primarily to its members for a subscription or any other amount but does not include -

(i) any body established or constituted under any law for the time being in force; or

(ii) any person or body of persons engaged in the activities of trade unions, promotion of agriculture, horticulture or animal husbandry; or

(iii) any person or body of persons engaged in any activity having objectives which are in the nature of public service and are of the charitable, religious or political nature; or

(iv) any person or body of persons associated with press or media.'

7. It is also necessary to recall the nature of activities undertaken by the two organisations. M/s. Phonographic Performance Ltd. is a society comprising of music companies whose copyright material is routed for public performance or broadcasting through the society for which fees are collected and expenditure in connection with such activity being deducted thereon before being remitted to the owner of copyright. It is the case of the tax authorities that the amount retained on account of amounts expended is a consideration received by it for rendering 'club or association service' and is, therefore, liable to tax under Finance Act, 1994. M/s. Indian Performing Rights Society is, admittedly, an association of those in possession of copyright in music, literary works, etc. and charges a fee for inducting members into the society. Unlike the other assessee before us, M/s. Indian Performing Rights Society does not act as an intermediary for distribution of copyright material to users. On the contrary, it acts on its own behalf to negotiate with potential users and receives license fee which is then allocated to its members in accordance with its internal regulations. Tax authorities have sought to exact a levy on both the membership fee and the amount retained on account of expenditure incurred.

8. Learned Counsel for M/s. Phonographic Performance Ltd. places before us a sample of invoices issued by them to licensees. It is seen from these invoices that they are issued on their own account towards the use of copyright material. These invoices carry the endorsement that the taxable service is 'copyright' [taxable under Section 65(105)(zzzzt) of Finance Act, 1994] and by citing the decision of the Hon'ble High Court of Bombay in Indian National Shipowners' Association v. Union of India [2009 (14) S.T.R. 289 (Bom.)], which has been affirmed by the

Hon'ble Supreme Court, argued that the taxability as 'copyright service' having been accepted would preclude recovery of tax under any other previously existing category of taxable service. The invoices that are furnished indicate acceptance of the taxable services as 'copyright' for the period beyond that in dispute. The decision supra in re Indian National Ship owners' Association has held that

'38. If the Department's contention is accepted that would mean that the activities of the members of the 1st petitioner are covered by entry (zzzy) and entry (zzzzj). Such a result is difficult to comprehend because entry (zzzzj) is not a specie of what is covered by entry (zzzy). Introduction of new entry and inclusion of certain services in that entry would presuppose that there was no earlier entry covering the said services. Therefore, prior to introduction of entry (zzzzj), the services rendered by the members of the 1st petitioner were not taxable. Creation of new entry is not by way of amending the earlier entry. It is not a carve out of the earlier entry. Therefore, the services rendered by the members of the 1st petitioner cannot be brought to tax under that entry.

39. At this stage, we may usefully refer to the judgment of the Assam High Court in Magus Corporation's case (supra). While discussing what is tax on services the Assam High Court observed as under :

"It may be pointed out, at the very outset, the tax on services is an "indirect tax" and is a relatively new concept in India. As a matter of fact, Government of India had introduced the levy of "service tax", i.e. tax on services, for the first time, in the year 1994 borrowing the concept from developed countries. The basic purpose of this levy has been to increase revenue, treating the act(s) of rendering service, as an additional source of revenue. Depending upon its socio-economic compulsions, each country evolves its system of taxation adopting either a "comprehensive approach" or "selective approach". Under

the concept of "comprehensive approach", all services are taxable unless any of the services is specifically excluded; whereas under the system "selective approach" only specified services are taxable and it is assessed of "selective approach" which India has adopted. This distinction needs to be kept in mind, when we proceed further."

9. It is the contention on behalf of the appellant, M/s. Phonographic Performance Ltd., that in the then prevailing regime of specified taxable service, the insertion of a new taxable category precludes that activity from being taxed under a different head. Similar view had been adopted by this Tribunal in Cameo Corporation Services Ltd. v. Commissioner of Service Tax, Chennai [2008 (11) S.T.R. 161 (Tri.-Chennai)] and Commissioner of Service Tax, Ahmedabad v. Trumac Engg. Co. Pvt. Ltd. [2008 (10) S.T.R. 148 (Tri.-Ahmd.)]. Learned Authorised Representative urged us to accept the conclusions in the impugned order. Notwithstanding these urgings, we are convinced that the activity of rendering 'copyright service' from July, 2010 would detract from taxability as provider of 'club or association service'.

10. There is no doubt that the other appellant, M/s. Indian Performing Rights Society, is an association comprising of members who have come together for a common purpose. The conclusions in the impugned order have been reiterated by learned Authorised Representative to assert that an association receiving consideration from its members cannot but be held to be taxable under Finance Act, 1994. However, learned Counsel for the appellant contends that no service has been rendered for a consideration and that the transaction of the appellant, as the owner of copyright by deed of assignment, is akin to a sale by the member to the appellant and thereafter by the appellant to the user of the copyright material. Reliance is placed on the decision of the Hon'ble Supreme Court in

Performing Rights Society v. Commissioner of Income Tax [AIR 1976 SC 1973]. It is argued that an existing taxable service, 'intellectual property right service', specifically excludes copyright material and hence precludes being subjected tax as provider of any other service. Drawing attention to the decision of the Hon'ble Supreme Court in Joint Commercial Tax Officer v. The Young Men's Indian Association [AIR 1970 SC 1212] and its contemporary application by the Hon'ble High Court of Jharkhand in Ranchi Sports Club Ltd. v. Chief Commissioner of Central Excise and Service Tax, Ranchi Zone [2012 (26) S.T.R. 401 (Jhar.)], it is contended that the principle of mutuality would render any transaction between its members and itself outside the ambit of taxation.

11. We have observed that this appellant is an association of persons. Doubtlessly, the members have paid a certain amount for the privilege of membership. They have likewise participated in contributing to the common expenses of the association. It is the contention of Revenue and learned Authorised Representative that, by virtue of being an association and being a recipient of contributions from its members, such receipts are rendered taxable. We have held, in our decision in Cricket Club of India v. Commissioner Service Tax, Mumbai [2015 (40) S.T.R. 973 (Tri.-Mumbai)], that taxability does not follow upon the existence of these two facets unless the rendering of a service is also perceptible in the transaction of club or association with its members. That members may come together for a common purpose which may involve membership fee and participation in common expenditure is an accepted reality of the existence of social man. To take it beyond that perspective to the hard reality of subjection to tax, the object of the tax law must also be fulfilled which, in relation to Finance Act, 1994 is the rendering of a service. The impugned order has failed to convince that a service is rendered by the appellant to its *members and the contributions are the quid pro quo for that service.*

12. There is yet another aspect of the submissions that cannot be overlooked in so far as both appellants are concerned. Section 33 of Copyright Act, 1957 requires that copyright transactions be handled only through a society registered under the Act. With such a statutory mandate in force, the option of transaction except through societies such as the two appellants is non-existent. A transaction in services, particularly of a taxable service, carries with it the characteristic of voluntariness and exercise of option to execute that activity by oneself or through another entity; it is upon the exercise of the option to source such activity that taxability arises. A legal mandate to act only through a society erases the exercise of option and such activity ceases to be a service. Moreover, the definition of 'club or association service' specifically excludes 'any body established or constituted under any law for the time being in force'

There can be no doubt that 'copyright societies' are established under law and hence not liable to be taxed on any receipts from its members."

5.3 Learned Authorized representative, sought to challenge the order of the Tribunal in appellants own case and argued that Hon'ble Supreme Court has in case of State of West Bengal & Others vs Calcutta Club Ltd [(2016) 5 SCC 356], referred the following issue to larger bench:

"i. Whether the doctrine of mutuality is still applicable to incorporated clubs or any club after the 46th amendment to Article 366 (29A) of the Constitution of India?

ii. Whether the judgment of this Court in Young Men's Indian Association (supra) still holds the field even after the 46th amendment of the Constitution of India; and whether the decisions in Cosmopolitan Club (supra) and

Fateh Maidan Club (supra) which remitted the matter applying the doctrine of mutuality after the constitutional amendment can be treated to be stating the correct principle of law?

iii. Whether the 46th amendment to the Constitution, by deeming fiction provides that provision of food and beverages by the incorporated clubs to its permanent members constitute sale thereby holding the same to be liable to sales tax?"

We do not find any merits in the submissions made by the learned Authorized Representative. The issue in respect of "mutuality of interest" or applicability of the above issue referred to the larger bench of Hon'ble Supreme Court would be applicable only if the services provided by the appellant's to its member were held to be classifiable under the category of "Club and Association Services" and the Appellants were held to fall within the definition of Club or Association.

5.4 Excerpts from Section 33 to 34 of the Copyright Act, 1957 relevant to the present controversy are reproduced below:

"CHAPTER VII COPYRIGHT SOCIETIES

33. Registration of Copyright society.—

(1) No person or association of persons shall, after coming into force of the Copyright (Amendment) Act, 1994 (38 of 1994) commence or, carry on the business of issuing or granting licences in respect of any work in which copyright subsists or in respect of any other rights conferred by this Act except under or in accordance with the registration granted under sub-section (3):

Provided that an owner of copyright shall, in his individual capacity, continue to have the right to grant licences in respect of his own works consistent with his obligations as a member of the registered copyright society:

Provided further that the business of issuing or granting licence in respect of literary, dramatic, musical and artistic works incorporated in a cinematograph films or sound recordings shall be carried out only through a copyright society duly registered under this Act:

Provided also that ……….

(2) Any association of persons who fulfils such conditions as may be prescribed may apply for permission to do the business specified in sub-section (1) to the Registrar of Copyrights who shall submit the application to the Central Government.

(3) The Central Government may, having regard to the interests of the authors and other owners of rights under this Act, the interest and convenience of the public and in particular of the groups of persons who are most likely to seek licences in respect of the relevant rights and the ability and professional competence of the applicants, register such association of persons as a copyright society subject to such conditions as may be prescribed:

Provided that the Central Government shall not ordinarily register more than one copyright society to do business in respect of the same class of works.

3A) ……….

(4) ……….

(5) ………………..

33A. Tariff Scheme by copyright societies.—

(1) Every copyright society shall publish its tariff scheme in such manner as may be prescribed.

(2) ………………..

34. Administration of rights of owner by copyright society.—

(1) Subject to such conditions as may be prescribed,—

(a) a copyright society may accept from an author and other owners of right exclusive authorisation to administer any right in any work by issue of licences or collection of licence fees or both; and

(b) an author and other owners of right shall have the right to withdraw such authorisation without prejudice to the rights of the copyright society under any contract.

(2) ....

(3) Subject to such conditions as may be prescribed, a copyright society may—

(i) issue licences under section 30 in respect of any rights under this Act;

(ii) collect fees in pursuance of such licences;

(iii) distribute such fees among author and other owners of right after making deductions for its own expenses;

(iv) perform any other functions consistent with the provisions of section 35.

From the provisions of Section 33, 33A and 34 of the Copyright Act, 1957 reproduced above the scheme in which the appellants are operating is quite evident. From the second proviso to Section 33(1) it is quite evident that grant of business license in respect of certain category of works could be done only through the registered copyright society. Thus Section 33 (1) provides for registration of the said societies. Though not specifically incorporated under the said Act, the society is registered under that Act, and the owner of copyright could have further granted the license in respect of their works only through the registered society. The section 33A makes it obligatory on the part of society registered under Section 33 to publish the tariff and Section 34 lays down the manner in which the copyright society would administer the right of owner.

5.5 Section 18 and 19 of the Copyright Act, 1957, provides for assignment and manner of assignment of copyright by the owner. The relevant excerpts from these section are reproduced below:

"**18. Assignment of copyright.—**

(1) The owner of the copyright in an existing work or the prospective owner of the copyright in a future work may assign to any person the copyright either wholly or partially and either generally or subject to limitations and either for the whole term of the copyright or any part thereof:

Provided that in the case of the assignment of copyright in any future work, the assignment shall take effect only when the work comes into existence.

Provided further that ………

Provided also that ……..

Provided also that …….

(2) Where the assignee of a copyright becomes entitled to any right comprised in the copyright, the assignee as respects the rights so assigned, and the assignor as respects the rights not assigned, shall be treated for the purposes of this Act as the owner of copyright and the provisions of this Act shall have effect accordingly.

(3) In this section, the expression "assignee" as respects the assignment of the copyright in any future work includes the legal representatives of the assignee, if the assignee dies before the work comes into existence. ***19. Mode of assignment.—***

(1) No assignment of the copyright in any work shall be valid unless it is in writing signed by the assignor or by his duly authorised agent.

(2) The assignment of copyright in any work shall identify such work, and shall specify the rights assigned and the duration and territorial extent of such assignment.

(3) The assignment of copyright in any work shall also specify the amount of royalty and any other consideration payable, to the author or his legal heirs during the currency of the assignment and the assignment shall be subject to revision, extension or termination on terms mutually agreed upon by the parties.

(4) ……...

(5) ……...

(6) ……….

(7) ……….

(8) The assignment of copyright in any work contrary to the terms and conditions of the rights already assigned to a copyright society in which the author of the work is a member shall be void.

(9) ……….

(10) ……...”

5.6 From the provisions of Section 18 and 19 reproduced above it is quite evident that every owner of the copyright could have assigned the right to any other person by way of writing subject to the terms and conditions as may stated by the assignor. But once assigned in respect of respect of the right assigned the assignee becomes the owner of the right to the extent of assignment. In the present case the copyright owners have assigned the right in copyright to the appellant, society registered under the Copyright Act. The appellant society is thus administering the right of owner assigned to it as if it is the owner of the copyright by issuance of the license for utilization of the copyrighted material. They in terms of section 34 of the Copyright Act, collect the fees in pursuance of the licenses issued by it under Section 30 to the users of the copyrighted material and share the same with the owner of copyright after deducting its expense. In our view the appellants are rendering “Copyright Services” as the assignee of copyright by the owner to them in terms

Section 18 as a society registered under Section 33. In fact they are paying service tax under that category. For payment of the service tax entire amount collected by the appellants from the users is taken for determination of the taxable value and service tax discharged on that. Having done so, we do not see any merits in the demand of service tax under the category of "Club or Association Services".

6.0 In view of discussions as above the appeals filed by the Appellant are allowed and the impugned orders are set aside.

(Order pronounced in the open court)

(Sanjiv Srivastava)
Member (Technical)

(Dr. Suvendu Kumar Pati)
Member (Judicial)

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