

**CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL  
MUMBAI**

**WEST ZONAL BENCH**

**SERVICE TAX APPEAL NO: 86231 OF 2021**

[Arising out of Order-in-Original No. MUM.SOUTH/CGST/Commr-04/21-22 dated 16<sup>th</sup> April 2021 passed by the Principal Commissioner of CGST & CX, Mumbai South.]

**Bombay Chamber of Commerce & Industry**

3<sup>rd</sup> floor, Plot No.4, Mackinnon Mackenzie Building  
4, Shoorji Vallabhdas Marg, Ballard Estate  
Mumbai - 400001

*... Appellant*

*versus*

**Principal Commissioner of CGST & Central Excise**

**Mumbai South**

13<sup>th</sup> Floor, Air India Bldg, Marine Drive Nariman Point  
Mumbai - 400021

*...Respondent*

APPEARANCE:

Shri Harish Bindumadhavan, Advocate for the appellant

Shri Badhe Piyush Barasu, Deputy Commissioner (AR) for the respondent

**WITH**

**SERVICE TAX APPEAL NO: 86433 OF 2021**

[Arising out of Order-in-Original No. MUM.SOUTH/CGST/Commr-04/21-22 dated 16<sup>th</sup> April 2021 passed by the Principal Commissioner of CGST & CX, Mumbai South.]

**Principal Commissioner of CGST & Central Excise**

**Mumbai South**

13<sup>th</sup> Floor, Air India Bldg, Marine Drive Nariman Point  
Mumbai - 400021

*... Appellant*

*versus*

**Bombay Chamber of Commerce & Industry**

3<sup>rd</sup> floor, Plot No.4, Mackinnon Mackenzie Building  
4, Shoorji Vallabhdas Marg, Ballard Estate  
Mumbai - 400001

*...Respondent*

APPEARANCE:

Shri Badhe Piyush Barasu, Deputy Commissioner (AR) for the appellant

Shri Harish Bindumadhavan, Advocate for the respondent

**CORAM:**

**HON'BLE MR S. K. MOHANTY, MEMBER (JUDICIAL)**  
**HON'BLE MR C J MATHEW, MEMBER (TECHNICAL)**

**FINAL ORDER NO: A / 85961-85962 /2023**

DATE OF HEARING: 20/12/2022  
DATE OF DECISION: 19/06/2023

PER: C J MATHEW

M/s Bombay Chamber of Commerce & Industry and Principal Commissioner of CGST & Central Excise are both in appeal impugning order<sup>1</sup> of Principal Commissioner of CGST & CX, Mumbai South. The Bombay Chamber of Commerce & Industry is an incorporated body of persons and organizations and the impugned proceedings, culminating in confirmation of demand of ₹ 1,17,57,066/- under section 73 of Finance Act, 1994 for the period up to 2010-11 and ₹ 25,31,381/- for 2011-12, originated in show cause notice for recovery of ₹ 2,76,24,095/- for the period from 2007 to 2011-12 on consideration received for alleged rendered of 'club or

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<sup>1</sup> order-in-original no. MUM.SOUTH/CGST/Commr-04/21-22 dated 16<sup>th</sup> April 2021

association service’, ‘technical inspection and certification service’, ‘business support service’ and ‘convention service’ taxable under section 65(105) of Finance Act, 1994.

2. The adjudicating authority held that the claim of the noticee that the entirety of disputed receipts had been received for providing ‘club or association service’, and covered by section 65(105)(zzze) of Finance Act, 1994, is not tenable as the impugned activities were within the specifics of section 65(105)(zzi), section 65(105)(zzzq) and section 65(105)(zc) which fitted within ‘technical inspection and certification service’, ‘support service of business and commerce’ and ‘convention service’ respectively in section 65(25a), section 65(108), section 65(104c), section 65(32) and section 65(99a) of Finance Act, 1994. Nonetheless on the plea of the appellant that several decisions of the Hon’ble Supreme Court, such as *State of West Bengal v. Calcutta Club Limited [AIR 2019 SC 310]* and *Chief Commissioner of Central Excise & Service Tax & Others v. Ranchi Club Ltd [2019-TIOL-449 SC-ST-LB]*, as well as dismissal of appeal of Revenue against decisions of the Tribunal in *Cricket Club of India v. Commissioner of Service Tax, Mumbai [2015 (40) STR 973 (Tri-Mumbai)]* and in *Indian Banks Association v. Commissioner of Service Tax, Mumbai [2016-TIOL-247-CESTAT-MUM]* before the Hon’ble Supreme Court had settled law on taxability of ‘services’ provided by clubs or associations to its members under Finance Act, 1994, the

adjudicating authority restricted the confirmation of demand under each of these 'taxable services' only to the extent of having been rendered to non-members while dropping the demand insofar as these pertained to the members.

3. Bombay Chamber of Commerce and Industry is before us against the confirmation of ₹ 1,42,88,447/-. According to them, confirmation of demand of ₹ 1,17,57,066/-, pertaining to transactions beyond the normal period of limitation in section 73 of Finance Act, 1944 is erroneous as, in the absence of any allegation of ingredients prescribed therein, the extended period cannot be invoked. It is also intimated that during 2011-12, after obtaining registration under Finance Act, 1994, they had discharged tax liability of ₹ 66,01,089/- besides paying ₹ 1,94,51,489/- and debiting ₹ 28,79,449/- in the CENVAT credit account before issue of notice.

4. Revenue is before us against dropping of ₹ 1,33,35,648/- in the impugned order. According to review order of the competent Committee of Chief Commissioners, the adjudicating authority had relied merely upon the certificate of chartered accountant on the computation of receipts from having rendered service to members instead of ascertaining the correctness of such certification. It would, therefore, appear that Revenue has no cavil on the finding that the appellant-assessee is not liable to tax under Finance Act, 1994 on

consideration received for services rendered by Bombay Chamber of Commerce to its members. The relief sought by appellant-Commissioner is squarely restricted only to ascertainment that the amount dropped does pertain to services rendered to members alone.

5. According to Learned Counsel for the appellant, the demand on account of provision of 'technical inspection and certification service' for ₹ 1,25,68,933/- was inappropriate as the activity itself is not amenable to taxation. According to him the demand was confirmed solely on the ground that circular no. 145/14/2011-ST dated 19<sup>th</sup> August 2011 of Central Board of Excise and Customs (CBEC) has informed field formations that issuing of such certificates is tantamount to rendering of the service alleged in the present dispute. He submitted that the decision of the Tribunal in *Antony Garages Pvt Ltd v. Commissioner of Central Excise, Raigad* [2015 (38) STR 49 (Tri. - Mumbai)] makes it abundantly clear that the intent of the section 65(105)(zz) of Finance Act, 1994 does not pertain to fees levied for issue of 'certificate of origin' and 'taxable service' therein cannot be overruled by a circular in breach of the same.

6. Before proceeding further with the other heads on which tax liability has been sought to be fastened, it would appropriate to consider bar of limitation insofar as this particular service is concerned. It is admitted that the entire amount sought to be charged

to service tax pertains to issue of certificate of origin and it is also on record in the impugned order that the receipts for issue of such certificates to non-members were prior to 2011-12 which is beyond the normal period of limitation in section 73 of Finance Act, 1994. The appellant has contended that the ingredients for invoking extended period are not evidenced as they were under the *bona fide* belief that issue of 'certificate of origin' would not come within the ambit of service tax as enumerated in Finance Act, 1994. It is seen from the impugned order that the demand was crystallised on the basis of circular no. 145/14/2011-ST dated 19<sup>th</sup> August, 2011 of Central Board of Excise & Customs (CBEC) clarifying that the issue of such certificates amounts to rendering of 'technical inspection and certification service' without going into the aspect of definition and conformity of the proposal in the show cause notice of taxability. The issue itself came to be interpreted so only in August 2011 which, by itself, suffices to negate the grounds on which the extended period should have been invoked. Furthermore, 'certificate of origin' issued under the authority of legislation giving effect to trade agreements or for validation of details in import documents are invariably sought in relation to exports from a country. The inclusion of service tax, if leviable, in the billings raised upon persons to whom such service are issued – whether members or non-members – would render the recipient of that service eligible to monetization of the credit, enabled

therefrom, under rule 5 of CENVAT Credit Rules, 2004. As the amounts so collected would have to be reimbursed to the recipients of the service by the Central Government, that; by itself would suffice to exclude any of the ingredients available for invoking the extended period in section 73 of Finance Act, 1994 and there is no reason not to accept the contention that the demand is barred by period of limitation. Accordingly, we set aside the confirmation of demand of ₹ 1,25,68,933/- on 'technical inspection and certification service' for the entire period of dispute.

7. The demand, insofar as 'support service for business or commerce' is concerned, pertains to secretarial work undertaken for certain 'trade associations' on fixed charges, and upon organizing seminars and training programmes that were held to taxable for providing 'convention service' for the disputed period. It is contended by Learned Counsel for the appellant that the definition of 'convention service' in section 65(32) of Finance Act, 1994 requires that these should not be open to the general public and whereas their programmes are open to any member subject to payment of fee and, therefore, does not fall within the ambit of taxable service therein. It is seen that the entire amount reflected in the balance sheet under the head has been subjected to taxation merely because no exhibitions have been organized during the disputed period. Fastening of liability under Finance Act, 1994 without any attempt at eliciting the nature of

the activity actually undertaken is sufficiently 'vague' not to discard the contention of appellant that extended period of limitation cannot be invoked. Hence the demand on 'convention service', to the extent of being beyond normal period of limitation, is set aside. The secretarial service rendered to various bodies, such as Container Shipping Lines Association, Bombay City Policy Research Foundation, etc., to the extent that they are not members are liable to tax under the head of 'support service of business or commerce' and, therefore, devolves on the appellant. Likewise, insofar as 'club and association service' is concerned, it has been pleaded that the confirmed amount pertains to charges in relation to arbitration proceedings. We do not find any reason to hold the charges collected under this head to be liable to tax under 'club or association service' as enumerated except those involving non-members which is not evidenced. The demand confirmed under these two heads, amounting to ₹ 2,62,038/- and ₹ 1,78,190/- respectively, would need to be subjected to scrutiny by the original authority for conformity with the definition of the respective heads under which these had been confirmed.

8. Insofar as the appeal of Revenue is concerned, the objection has been solely on the ground that the adjudicating authority has relied upon the certification issued by a chartered accountant. The certificate issued by a professional functioning under the aegis of

Institute of Chartered Accountants of India (ICAI) cannot easily be brushed away as inconsequential and unreliable. The grounds of appeal have not evinced any reason, other than certain decisions rendered in particular context, to question the reliance placed by the adjudicating authority on the certification of chartered accountant. The jurisdictional committee of Chief Commissioners appears to have been guided merely by academic doubt and upon justifiable doubt emanating from responsible ascertainment of error in determination of the respective proportions. Sufficient time was available to carry out that exercise before elapse of deadline for undertaking review as provided for in Finance Act, 1994.

9. The proposition in the appeal of Revenue that the segregation adopted by the adjudicating authority requires verification is not tenable as valid justification even for directed remand. In the absence of any material ground to discard the certification adopted by the adjudicating authority, and in the light of the acceptance of the principle adopted by the adjudicating authority that services rendered to members is not liable to tax in the hands of Bombay Chamber of Commerce and Industry, we see no reason to accede to this relief sought in the appeal of Revenue.

10. Accordingly, demand of ₹ 1,25,68,933/- and ₹ 1,27,286/-, allegedly liable for having rendered 'technical inspection and

certification service' and 'convention service', is set aside for non-conformity with the period of limitation in section 73 of Finance Act, 1994. Insofar as the confirmation of demands of ₹ 2,62,038/- and ₹ 1,78,190/- are concerned, the appropriate authority would need to determine the taxability of arbitration charges as well as the amount collected from members for rendering of secretarial service. Appeal of assessee is, thus, disposed off on those terms.

11. Appeal of Revenue is dismissed.

*(Order pronounced in the open court on 19/06/2023)*

**(S.K.MOHANTY)**  
***Member (Judicial)***

**(C J MATHEW)**  
***Member (Technical)***

*\*/as*