CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, MUMBAI

REGIONAL BENCH - COURT NO. I

Service Tax Appeal No. 85262 of 2017

[Arising out of Order-in-Appeal No. MUM-SVTAX-002-528&529/16-17 dated 31.10.2016 passed by the Commissioner (Appeals), Service Tax-II, Mumbai].

Iqbal Abdullah **.... Appellant**
C/o Gokhale Associates, 401, The Affairs,
Opp. to Bhumiraj Coast Arica, Sector-17,
Palm Beach Road, Sanpada, Navi Mumbai – 400 705.

Versus

Commissioner of Service Tax, Mumbai-II **....Respondent**
Central GST Bhavan
115, M.K. Road, Church Gate
Mumbai – 400 020.

APPEARANCE:

None for the Appellant

Shri Dhananjay Dahiwale, Authorized Representative (AR) for the Respondent

CORAM:

HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)
HON'BLE MR. M.M. PARTHIBAN, MEMBER (TECHNICAL)

FINAL ORDER NO. A/85003/2026

Date of Hearing: 09.07.2025
Date of Decision: 06.01.2026

Per: M.M. PARTHIBAN

This appeal has been filed by Shri Iqbal Abdullah, Mumbai (herein after, referred to as "the appellant", for short) assailing the Order-in-Appeal No. MUM-SVTAX-002-528&529/16-17 dated 31.10.2016 (herein after, referred together as "the impugned order") passed by the Commissioner (Appeals), Service Tax-II, Mumbai.

2.1 The brief facts of the case are that the appellant herein is a professional cricket player who is playing the game of cricket in many League matches and domestic tournaments such as 'Ranji Trophy', 'Senior One day Tournaments', 'NKP Salve Challenger Trophy' etc. representing 'Mumbai Team' from the year 2009 onwards. He has also been participating the Indian Premier League (IPL) matches and had entered into contract with 'Knight Riders Sports Private Limited' (herein after referred to as 'the Knight Riders', for short) for playing cricket matches in IPL tournaments against remuneration/player fees and other benefits to be received in terms of such contract. For the purpose of payment of service tax on 'other taxable services' and for compliance with the Service Tax statute, the appellant is registered with the jurisdictional Commissionerate under service tax registration No. BSTPS5445KSD001.

2.2 During the disputed period from April, 2008 to March, 2012, the appellant had entered into two contracts viz., contract dated 07.01.2009 with the Knight Riders and contract dated 06.04.2011 with Knight Riders & IPL for playing cricket for IPL season-2 and IPL season-4 respectively. BCCI-IPL is a sub-committee of the Board of Control for Cricket in India (BCCI), specifically created for the purpose of holding Indian Premier League Matches. M/s. Knight Riders Sports Private Limited is a franchisee under the consortium, which engages various players to play cricket in the IPL Twenty-20 matches. The appellant herein, Shri Iqbal Abdullah, is a cricket player for such franchisee. On perusal of the contracts entered into with the BCCI-Franchisor i.e., Knight Riders/Knight Riders & IPL, the department observed that the appellant had received certain amount from the said franchisee for providing the taxable service under the category of Business Support Service (BSS), but did not pay service tax on provision of such service for the period from 2008-2009 to 2011-2012.

2.3 Accordingly, Show Cause Notices (SCNs) dated 17.01.2011, 16.04.2012 and 17.10.2012 were issued to the appellant, which had culminated into the issue of Orders-in-Original dated 31.01.2012 and 17.09.2014, wherein the adjudicating authorities have confirmed service tax demands proposed in the SCNs along with interest under Section 73 of the Finance Act, 1994 and imposed penalties under Section 77, 78 *ibid*. Being aggrieved with such orders of the original authority, the appellant had filed separate appeals before the learned Commissioner (Appeal), who in deciding such appeals by a common impugned order passed in this regard, had partly confirmed the demand of service tax with interest with respect to 'Brand Promotion Service' for the period from 01.07.2020 to March, 2012; and dropped the demand of service tax on BSS for the period earlier to 01.07.2020 and the penalty imposed on the appellant under Section 78 of the Finance Act, 1994. In support of such order, learned First

Appellate authority has held that the services of players are primarily used in relation to participation in matches, which cannot be termed as provision of a taxable service, under the category of BSS, in order to be subjected to levy of service tax thereon. Further, by relying on the judgement of the Hon'ble Supreme Court in the case of Nizam Sugar Factory – 2006 (197) E.L.T. 465 (S.C.) he had also held that extended period of limitation is not invokable and the demand for the period April, 2010 to September, 2010 is time barred. He has also held that the activities undertaken by the respondent with regard to promotion or marketing of brand/logo/mark of the team by the players would only be considered as provision of service under category of Brand Promotion Service (BPS)and the percentage of such player fees received from such contracted amount would be liable to service tax from 01.07.2010 and he had confirmed the service tax demand for the period October, 2010 to March, 2012. However, in the absence of documentary evidence providing such portion of the amount, he had accepted the taxable value suggested by the order of the original authority for purpose of demanding service tax. Feeling aggrieved with the impugned order of the Commissioner (Appeals) to the extent he had confirmed the service tax demands for the period October, 2010 to March, 2012, the appellant had filed this appeal before the Tribunal.

3. This appeal was placed for hearing before the Tribunal on various dates in the past viz., 27.09.2024, 07.03.2025, 02.05.2025 and on 09.07.2025. However, since none had been appearing on behalf of the appellant and as the issue under dispute has already been examined by the Tribunal in a number of cases involving similar set of facts, with the assistance of learned AR, the appeal is taken up for hearing and disposal in the following paragraphs.

4. We find that the issue in dispute lies in the narrow compass of determining whether the activity of playing cricket by the appellant in the IPL league matches, wherein the appellant was obliged to wear the team clothing as supplied by the IPL franchise i.e., the Knight Riders, allowing them to photograph himself, film, televise etc amount to promotion or marketing of brand/logo/mark involving taxable services as defined under Section 65(105)(zzzzq) of the Finance Act, 1994 and whether the adjudged service tax demands are legally sustainable?

5. In the impugned order, the learned Commissioner (Appeals) had come to the conclusion that the appellant provide the services covered under Section 65(105)(zzzzq) ibid and hence there is a requirement to pay service tax. The relevant paragraphs in arriving at such conclusion are as follows:

"12. I find that under the new services introduced vide Finance Act, 2010. the service of promoting brand of goods, services, events, business entities etc. was introduced vide Section 65(105)(zzzzq) of the Finance Act which defines Brand Promotion service as 'any service provided or to be provided to any person, by any other person, through a business entity or otherwise, under a contract for promotion or marketing of a brand of goods, service, event or endorsement of name, including a trade name, logo or house mark of a business entity by appearing in advertisement and promotional event or carrying out any promotional activity for such goods, service or event. Further explanation provides that the "brand" includes symbol, monogram, label, signature or invented words which indicate connection with the said goods, service, event or business entity'

13. In view of the insertion/inclusion of the taxable service viz. Promotion of 'Brand' of goods, services, events, business entity, vide FA 2010, the promotional activities in which the appellant had been engaged by wearing official cricket clothing, displaying franchisee's and its sponsors' mark/logo etc. would be appropriately classifiable under the new service i.e. Promotion of Brand Services w.e.f. 1.7.2010.

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17. Therefore, in view of above judgement. I am of the view that only the percentage of the amount received towards promotional activities would be liable to service tax under the category of Promotion of Brand of goods, services effective from 1.7.2010

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19.2………..In the instant case, I find that the demand for the period April 2010 to September 2010 contending to be time barred by the appellant is covered by the SCN dt. 16.4.2012 whereby it is proposed to recover service tax on the promotional activities covering the period April 2010 to March 2011. The appellant has contended that all the facts were well within the knowledge of the department from the year 2011 when inquiry for the past period was initiated. I also find that the show cause notice dated 17th Jan. 2010 had been adjudicated vide the impugned order dated 31.01.2012 and the periodical show cause notice for the subsequent period i.e. 2010-11 on which the appellant has argued on the issue of limitation, was issued on 16.4.2012 and also on 17.10.2012 on the same issue.

Placing reliance on the judgements of the Hon'ble Supreme Court in the case of ECE Industries & Nizam Sugar Factory (supra), I am, of the view that the scn for the period April 2010 to September 2010 should have been issued within one year from the date of filing of the ST-3 return for the said period. However, in the instant case, the appellant was not registered with service tax and had not filed any return, the relevant date for issue of SCN would be 25th October 2011. Since the SCN for the period April 2010 to September 2010 has been issued on 16.4.2012, the demand for the period April 2010 to September 2010 is barred by limitation of time.

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21. In view of the foregoing, I set aside the impugned order dated 31.01.2012 and the demand for the period April 2010 to September 2010 and uphold the *portion of the demand covering the period October 2010 to March 2011 and April 2011 to March 2012 with interest and set aside the penalty under Section 78 of the FA."*

6. It is a fact on record that the SCNs had proposed for demand of service tax on the activity of the appellant as 'Business Support Service' under Section 65(105)(zzzq) of the Finance Act, 1994 and the original authorities have also confirmed the demand under the said taxable category. However, the learned Commissioner (Appeals) have found that the activity of the appellant is not chargeable under the category of BSS and these are chargeable to service tax as promotion or marketing of brand/logo/mark under Section 65(105)(zzzzq) ibid. The said taxable service, for which the learned Commissioner (Appeals) have confirmed the adjudged demands of service tax, has been defined under Section 65(105)(zzzzq) of the Finance Act, 1994 as follows:

> *"Section 65*
> *(105) "taxable service" means any service provided or to be provided,—*
>
> *(zzzzq) to any person, by any other person, through a business entity or otherwise, under a contract for promotion or marketing of a brand of goods, service, event or endorsement of name, including a trade name, logo or house mark of a business entity by appearing in advertisement and promotional event or carrying out any promotional activity for such goods, service or event.*
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> *Explanation.*—For the purposes of this sub-clause, "brand" includes symbol, monogram, label, signature or invented words which indicate connection with the said goods, service, event or business entity;"

On plain reading of the above taxable entry, it clearly transpires that the nature of services shall be for promotion or marketing of a brand of goods, trade name, logo etc. of a business entity under a contract. The nature of activities performed by the appellant as per the contracts entered are primarily for playing the cricket game in IPL League matches. The activities of wearing team clothing supplied by the IPL Franchisee which contain display of badge, mark, logo etc., is not with the exclusive intent of promotion or marketing, as such clothing is worn during the time of playing the cricket game and other related activities. Therefore, in our view it would not strictly fit into the taxable category of promotion and marketing services as per the definition provided under Section 65(105)(zzzzq) ibid.

7. In this regard, we find that the Co-ordinate Bench of the Tribunal, in the case of *Umesh Yadav Vs. Commissioner of Central Excise, Nagpur* which involve identical set of facts of the present case, reported in 2018-TIOL-

1179-CESTAT-MUM had passed the Final Order dated 31.01.2018 in Service Tax Appeal Nos. 85079/2015 & 85381/2015, wherein they had set aside the revision of service tax category for demand of service tax by the Commissioner (Appeals), which is different from the one for which SCN was issued and confirmed by the original authority. The relevant paragraphs of the said order is quoted below:

> *"6. After considering the submissions of both the parties and on perusal of the material on record, we find that the show cause notice was issued proposing to demand service tax under business support service and the original authority has confirmed the demand under the said category whereas at the appellate stage, the Commissioner (appeals) has changed the classification from business support service to brand promotion service suomotu and unilaterally which is not permitted under law. Further, we find that this issue has been settled in favour of the assessee by various decisions relied upon by the appellant-assessee cited supra. Therefore, by following the ratio of the said decisions, we are of the considered opinion that the impugned order passed by the Commissioner (Appeals) going beyond the show cause notice is not sustainable in law and, therefore, we set aside the impugned order and allow the appeal of the appellant-assessee. We also find that the department is also holding the view that the appellant is not liable to tax under the category of brand promotion service. Consequently, we do not find any merit in the departments appeal in view of the various decisions cited supra.*
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> *7. Consequently, we allow the appellant-assessees appeal and set aside the impugned order and also dismiss the appeal of the Revenue."*

8.1 In the case of *Commissioner of Central Excise, Customs & CGST, Delhi-III Vs. Piyush Chawl*a reported in 2019-TIOL-2092-CESTAT-DEL, the Tribunal by relying on various case laws, held that remuneration received by the respondent cricket player from the IPL franchisee M/s KPH Dream Cricket Pvt. Ltd. is not liable to service tax levy under BSS. The relevant paragraphs are as follows:

> *"6. It is clear that the terms and conditions of the agreement made the respondent employee of KPH. He was rather playing for KPH without having any independent entity. Whatever output/goals were achieved, were by the team as a whole and there could not be any quantification of any work done or service provided by the respondent. He was simply a purchased member of the team working under KPH. He was in employment of KPH-IPL and was not an independent worker. It is settled legal position that services provided by an employee, for the activities undertaken by the employer, for and under the instruction of the employer, cannot be termed as service provided by the employee.*
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> *7. An identical matter titled as Sourav Ganguly v. UOI & Ors.; 2016(43) STR 482 (Cal.) =* ***2016-TIOL-1283-HC-KOL-ST*** *has been decided by the Hon'ble Calcutta High Court in favour of cricketer. The Petitioner*

therein entered into an agreement with the franchisee under which he was obliged to participate in promotional activities apart from playing cricket for their franchisee and the department sought to tax the consideration received by the Petitioner from their franchisee under 'Business Support Service'. The Hon'ble High Court of Calcutta held that the Petitioner was engaged as a professional cricketer for which the franchisee was to provide fee to the petitioner. He was under full control of the franchisee and had to act in the manner instructed by the franchisee. The Hon'ble High Court further held that the Petitioner therein was not providing any service as an independent individual worker and his status was that of an employee. Therefore it cannot be said that the Petitioner was rendering any service which could be classified as Business Support Service. The relevant paragraphs of the said decision are extracted as under:-

> *68. "As regards the remuneration received by the petitioner for playing IPL cricket, in my opinion, the service tax demand raised on such amount under the head of Business Support Service" is also not legally tenable. Accordingly to the Department, the terms of the contract that the petitioner entered into with M/s Knight Riders Sports Pvt. Ltd. would reveal that the petitioner"s obligation was not limited to displaying his cricket skills in a cricket match. He also lent himself to business promotional activities. Thus he provided taxable service when he wore apparel provide by the franchisee that was embossed with commercial endorsement or when he participated in endorsement event. The Department admits that the free charged for playing the matches will fall outside THE purview of taxable service".*
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> *[Emphasis Supplied]*
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> *"However, the Department contends that the petitioner has been paid composite fee for playing matches and for participating in the promotion activities but the component of promotion activities could not be segregated for charging service tax. Accordingly, service tax is chargeable on the composite amount. For this contention, the Department on the letter dated 26 July, 2010 issued by the Central Board of Excise and Customs which is also under challenge in this writ petition. In his order dated 12 November, 2012 the respondent No.3 has held that the petitioner has received substantial remuneration from IPL franchises (Knight Riders sports Pvt. Ltd.) for rendering of promotional activities to market logos/brands/marks of franchisee/ sponsors. Such fees/ remuneration have been paid to the petitioner by the franchisee in addition to his playing skills and thus the service rendered by the petitioner are classifiable under the taxable service head of Business Support Service" as per the provisions of Sec. 65f (104c) read with sec. 65(105) (zzzzq) of the Finance Act, 1994. There appears to be inherent inconsistency in such decision of the respondent No.3 Sec. 65 (105) (zzzzq) pertains to brand promotion whereas Sec. 65(104c) pertains to business auxiliary services. They are two distinct and separate categories. As already indicated above, the taxable head of brand promotion was not in existence prior to 1 July, 2010, hence, reliance on that head for levying tax on the amount received by the petitioner from the IPL franchisee is misplaced and misconducted. This is sufficient to vitiate the order.*
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> *69. "Further, I find from the contract entered into by the petitioner with the IPL franchisee that the petitioner was engaged as a professional cricketer for which the franchisee was to provide fee to the petitioner. The petitioner was under full control of the franchisee and had to act in the manner instructed by the franchisee. The apparel that he had to wear was team clothing and the same could not exhibit any badge, logo, mark, trade name etc. The Petitioner was not providing any service as an independence individual worker. His status was that of an employee rather than an independent worker or contractor or consultant. In my opinion, it cannot be said that the petitioner was rendering any service which could be classified as business support service. He was simply a purchased member of a team serving and performing under KKR and was not providing any service to KKR as an individual. In this regard, I fully endorse and agree with the order dated 6 June, 2014 passed by the Commissioner of Central Excise (Appeals) Delhi-III in Appeal No. 330-*

> *332/SVS/RTK/2014, the facts of which case was similar to the fats of the instant case, excepting that the player concerned in that case was a member of the Chennai Super Kings."*
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> *[Emphasis Supplied]*
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> *71. "In view of the aforesaid, in my view, the remuneration received by the petitioner from the IPL franchisee could not be taxed under business support service."*

*8. This Tribunal also in various decisions viz. Shri Karn Sharma Vs. Commissioner of Central Excise & S.T, Meerut-I Appeal No. ST/59766/2013-CU(DB) (Tri-Allahabad|), Commissioner of Cus, & C. Ex., Goa vs. Swapnil Asnodkar 2018[10] G.S.T.L. 479 (Tri-Mumbai) = **2018-TIOL-92-CESTAT-MUM** & Umesh Yadav vs. Commissioner of Central Excise, Nagpur Appeal No. ST/85079/15 and ST/85381/15 (Tri.-Mumbai) while relying upon the decision of the Hon'ble Calcutta High Court in Sourav Ganguly's case (supra) have taken a similar view and held that the cricket player is not liable for service tax under Business Support Service.*

9. In view of the above, we are also of the opinion that the remuneration received by the respondent from the franchisee M/s KPH cannot be taxed as 'Business Support Service' and therefore, the appeal filed by the department is rejected."

8.2 We further that the disputed issue of demanding service tax on part of the services attributable taxable category, has already been dealt with by the Co-ordinate Bench of this Tribunal, in the case of *Sourav Ganguly Vs. Commissioner of Service Tax, Kolkata* (Now Commissioner of Central Goods & Service Tax & Central Excise, Kolkata South) reported in 2020 (12) TMI 534 – CESTAT Kolkata. In the said case, it was held that the view taken by the commissioner is not correct as the players had received the fees for the purpose of playing cricket only and even otherwise, it is a settled principle of law that if no machinery provision exists to exclude non-taxable service (playing cricket) from a composite contract, the same is not taxable since law must provide a measure or value of the rate to be applied and any vagueness in the legislative scheme makes the levy fatal. Thus, the Tribunal held in this case that the confirmation of demand could not be sustained. Considering that the ratio of the above decision squarely applies to the present case in hand, we are of the view that the confirmation of demand towards the percentage of amount of player fees paid towards promotional activities are not sustainable.

8.3 In the case of *Yusufkhan M. Pathan Vs. Commissioner of Central Excise & Service Tax, Vadodara-II* - (2023) 13 Centax 308 (Tri.-Ahmd.) the Co-ordinate Bench of the Tribunal, on the basis of various decisions passed by Tribunal and High Court in similar matter, have held that the demands of service tax are not sustainable and confirmation of by way of impugned order was set aside.

8.4 In another case of *Sourav Ganguly* v. *Union of India & Ors.*- 2016 (43) STR 482 (Cal.), the Hon'ble Calcutta High Court while deciding the issues in favour of cricketer have observed that the Petitioner therein entered into an agreement with the franchisee under which he was obliged to participate in promotional activities apart from playing cricket for their franchisee and the department sought to tax the consideration received by the Petitioner from their franchisee under 'Business Support Service'. The Hon'ble High Court of Calcutta held that the Petitioner was engaged as a professional cricketer for which the franchisee was to provide fee to the petitioner. He was under full control of the franchisee and had to act in the manner instructed by the franchisee. The Hon'ble High Court further held that the Petitioner therein was not providing any service as an independent individual worker and his status was that of an employee. Therefore it cannot be said that the Petitioner was rendering any service which could be classified as Business Support Service.

9. In view of the foregoing discussions and on the basis of the orders passed by the Co-ordinate Bench of the Tribunal and the Hon'ble High Court, the impugned order dated 31.10.2016 passed by the learned Commissioner (Appeals) does not stand the legal scrutiny. Therefore, we are of the considered view that the impugned order is liable to be set aside.

10. In the result, the impugned order is set aside and the appeal filed by the appellant is allowed in their favour.

(Order pronounced in the Open court on 06.01.2026)

(S.K. Mohanty)
Member (Judicial)

(M.M. Parthiban)
Member (Technical)

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