IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No. 2, R.K. Puram, New Delhi – 110 066.
Principal Bench, New Delhi

COURT NO. IV

DATE OF HEARING : 03/05/2018.
DATE OF DECISION: 04/06/2018.

Service Tax Appeals No. 60804-60808 of 2013

[Arising out of the Order-in-Original No. 26-30/ST/CB/CCE/ADJ/ 2013 dated 12/09/2013 passed by The Commissioner of Central Excise, New Delhi.]

M/s Society of Indian Automobile Manufacturers (SIAM)]] Appellant

Versus

CST, New Delhi Respondent

Appearance

S/Shri Prabhat Kumar, R.P. Singh, Advocates – for the appellant.

Shri Amresh Jain, Authorized Representative (DR) – for the Respondent.

CORAM: **Hon'ble Shri S.K. Mohanty, Member (Judicial)**
Hon'ble Shri C.L. Mahar, Member (Technical)

Final Order No. 52124-52128/2018 Dated : 04/06/2018

Per. C.L. Mahar :-

These are five appeals filed by the appellant which have arisen from a common order-in-original passed by the Commissioner vide his order dated 12/09/2013.

Sl. No.	Appeal No.	SCN No. and date	Amount involved (Rs.)	Period of demand
1.	E/60804/2013	DL/ST/AE/Gr.III/241/08	8695739/-	2005 to

		dated 16/04/2009	3868538/-	30/9/2008
2.	E/60805/2013	DL/ST/AE/Gr.III/241/08 dated 10/03/2010	1824777/- 398525/-	01/10/08 to 30/9/09
3.	E/60806/2013	DL/ST/AE/Gr.III/241/08 dated 30/08/2010	52360/- 1443121/-	01/10/09 to 31/3/10
4.	E/60807/2013	DL/ST/AE/Gr.III/241/08 dated 10/02/2012	4501428/- 1666864/-	2009-10 & 2010-11
5.	E/60808/2013	DL/ST/AE/Gr.III/241/08 dated 26/10/2012	15821528/ 12378956/	2011-12

The service tax has been demanded and confirmed under above-mentioned show cause notices and the order-in-original for different time periods which are mentioned in the above-mentioned table. The demand of service tax is primarily under two categories : (i) service under Club and Association (including the sale of statistical data to the Members of appellant association) ; (ii) under Business Exhibition Services.

2. The learned Advocate appearing for the appellant has pleaded that the Adjudicating Authority has not applied his mind and the submission made by them in their written submissions as well as during the personal hearing has not been taken into consideration. The learned Advocate has tried to bifurcate the period of demand under the category of Club and Association Service into two periods viz. for the period 16/01/2005 to 31/03/2008 and 01/04/2008 and thereafter. It has been argued that an amendment was made into the Finance Act, 1994 under which a new Section 96J has been inserted on 8th April 2011. It has been provided under new Section 96J that no service tax shall be levied or collected in respect of membership fee collected by a club or association formed for representing industry or commerce during the period on and from 16/06/2005 to

31/03/2008 (both days inclusive). It has been emphasized by the learned Advocate that the demand for the period covered by Section 96J need to be dropped as the appellant represent an industry as an Association and they are fully covered by the provisions of Section 96J of Finance Act, 1994. For the period beyond 31/03/2008 onwards it has been argued that there has been a plethora of judgments of various benches of the Tribunal, wherein it has been held that on the principle of "mutuality of interest" as no one can give service to himself the demand after 31st March, 2008 also deserves to be set aside. The learned Advocate has cited several Tribunal and High Court decisions in this regard specially the judgment of Hon'ble Gujarat High Court in the case of **Sports Cub of Gujarat vs. Union of India – 2010 (20) S.T.R. 17 (Guj.)** which has also been indorsed by the Hon'ble Supreme Court by dismissing the departmental appeal CC No. 4034 of 2010 vide order dated 22/03/2010. The relevant judgments of CESTAT relied upon by the learned Advocate are as under :-

(a) **FICCI vs. CST, New Delhi – 2015 (38) S.T.R. (Tri. – Del.)** ;

(b) **Export Promotion Council vs. CCE, New Delhi – 2012 (26) S.T.R. 558 (Tri. – Del.)** ;

(c) **NASSCOM vs. CST, Delhi – 2015 (37) S.T.R. 1041 (Tri. – Del.)** ; and

(d) **Sports Club of Gujarat vs. Union of India – 2010 (20) S.T.R. 17 (Guj.)**, approved by Supreme Court where

departmental appeal was dismissed in CC No. 4034/2010 vide order dated 22/03/2010.

3. With regard to the demand under the category of Business Exhibition Service it has been contended by the learned Advocate that the appellant has entered into a MoU with M/s Confederation of Indian Industry (CII), wherein an arrangement has been made between the appellant and M/s CII, that M/s CII will organize auto exhibition on behalf of the appellant and all the legal formalities including payment of the service tax will be done by M/s CII. After exhibition the Revenue received from the such auto exhibition will be shared between the appellant and M/s CII by an agreed formula of revenue sharing.

4. It has also been submitted by the learned Advocate that the Adjudicating Authority has wrongly held that the amount of the revenue received by the appellant on sharing basis from M/s CII is the revenue from the Business Exhibition Service on which they have not discharged the service tax. The learned Advocate has contended that as per the agreement between the appellant and M/s CII, the later were required to undertake several functions including payment of service tax and to elaborate this point the relevant extract from the MoU between M/s CII and the appellant dated 25th day of May, 2009 is reproduced here under:-

(a) To market the Auto Expo to all its 44 members through brochures, emails, telephonic marketing and any other mode of marketing that may be necessary to sell exhibition space to the SIAM members ;

(b) CII to collect all charges from SIAM members for the participation in the show along with service tax ;

(c) It is agreed that CII can raise bills in its own name directly on SIAM members participating in the show and also otherwise to deal with them directly relating to show matters ;

(d) As SIAM members would be deducting TDS on participation fee and would finally issue TDS Certificate in the name of CII, M/s CII would give due credit to SIAM of the TDS benefit availed as a result of receipt of TDS Certificate in its name from SIAM Members.

5. It can be seen from condition (b) of the MoU above that the M/s CII is required to collect all charges from the Society of Indian Automobile Manufacturers (SIAM) members for participation in the show cause exhibition alongwith the service tax. The CII has certified vide various certificates that service tax has been discharged by them on the gross amount collected from the Members for auto expo.

6. Further, it has also been argued that M/s CII has also provided certificate of the amount of revenue arising from Business Exhibition Service and shared by them with the appellant during various financial years.

7. We have also heard the Departmental Representative who has agreed with the contention of the appellant that the service tax demand before 31/03/2008 does not hold good in view of the insertion of Section 96J vide amendment made in the Finance

Act, 1994 w.e.f. 08/04/2011. For the period beyond 1st April, 2008. He has also agreed that the decisions given by this Tribunal and High Courts which has also been endorsed by Hon'ble Supreme Court make the charges collected by the Club and Association from his members as not service tax payable by following the basic principle of mutuality of interest.

The learned Departmental Representative has however vehemently argued that there is a difference between the amount of revenue sharing shown in the balance sheets of the appellant and the amount shown in the certificates issued by M/s CII. Therefore, it has been argued that the appellant has not discharged his service tax liability with regard to Business Exhibition Services on the entire amount received by them from the exhibitions.

8. We have heard both the sides and have perused the record of the appeal.

9. We are of the view that the demand of service tax under Club and Association category do not hold ground on two grounds:-

(i) for the period before 31/03/2008, the new Section 96J of Finance Act, 1994 exempts the service of club and association from payment of service tax on the membership charges collected by such associations ;

(ii) For the period from 1st April 2008 the issue is no more res-integra as there is a plethora judgment of this

Tribunal on this aspect as has also been mentioned in the foregoing paras we will like to reproduce the extract from the decision of Hon'ble High Court of Gujarat in the case of **Sports Club of Gujarat Ltd. vs. Union of India – 2010 (20) S.T.R. 17 (Guj.)**,

"20. For the applicability of service tax, there should be existence of two sides/entities, viz. transaction as against consideration. In a members-club there is no question of two sides. "Members" and "Club" both are the same entity. One may be called as "principal" when the other may be called as "agent". Therefore, such transaction, in between themselves, cannot be recorded as income, sale or service.

21. By relying upon the bye-laws of the clubs, a ground is sought to be raised that since the clubs also take on lease or hire moveable or immoveable property for its different purposes, they are liable to pay service tax. We have gone through the bye-laws and also the relevant rules and regulations of the Clubs and do not find any provision that the properties and/or the facilities, those are being made available by the members to themselves could be extended to third parties for any consideration whatsoever.

22. The members of the clubs are allowed exclusively to participate in the services rendered by the clubs and no third party is allowed to participate in the same. Even, the facilities and amenities of the clubs are not extended to any third party who, of course, may come as a guest and/or invitee of the members. The above exclusiveness is given for a limited period and for a specific purpose and therefore, in any case, it cannot be termed as "lease" or "hire". Thus, it is clear from the activities of the clubs, as stipulated in its bye-laws and the relevant rules and regulations that the "mandap keeper", in this case, are the members collectively. Hence, we are of the opinion that the understanding of the respondents about the petitioners □ dealing is fallacious, for they mean the word "client", relying on the

dictionary expression, instead of reading and understanding the correct meaning.

23. Service tax is recoverable from the "mandap keeper", who is having a different and distinct separate legal and physical entity and who lets-out the "mandap" with a commercial and trading object. Here, the members have formed the club to serve themselves mutually and for this purpose, the members are paying for such user and any amount of receipt and expenditure of the clubs is enjoyed and/or incurred by the members alone and not by third party.

24. The principle of mutuality is squarely applicable in this case as going by the definitions of "mandap", "mandap keeper" and "taxable service", as reproduced herein above, the facility of use of the premises and/or the facilities attached thereto, by the members of the clubs cannot be termed to be "letting-out" nor the members of the club using the facility/s or any portion of the premises for any function can be termed to be client/s. The services rendered by any person to his client pre-suppose the element of commerciality and obviously this transaction must be involved with a third party, as opposed to the members of the Club.

25. Merely because the clubs are exempted from the levy of income-tax, the respondents could not impose service tax, unless and until the same is permissible under the law. It has now become an elementary principle of law that the question of estoppel cannot arise nor the principle thereof can be applied as against the provisions of law. If it is found that a particular statute is not applicable to any person/s, the action taken by mistake cannot operate as an estoppel or acquiescence. Therefore, the entire proceedings against the clubs about the applicability of service tax are required to be quashed and set aside.

26. In taxation matters, where a High Court is concerned with the interpretation of an all India statute, it should be a practice and policy that if one High Court has interpreted a provision or

> section of a taxing statute which is an all India statute and there is no other view in the field, another High Court must ordinarily accept that view in the interest of uniformity and consistency in matter of application of taxing statute so as to avoid the challenge of discrimination in application and administration of tax matters. Such principle has been laid down in Maneklal Chunilal & Sons v. Commissioner of Income Tax - (1953) 24 I.T.R. 375; Commissioner of Income Tax v. Chimanlal J. Dalal & Co. - (1965) 57 I.T.R. 285, Commissioner of Income Tax v. Tata Sons Pvt. Ltd. - (1974) 97 I.T.R. 128 and J.D. Patel v. Union of India - 1975 G.L.R. 1083. We are, therefore, in respectful agreement with the view taken by the Calcutta High Court in the decision referred to in Dalhousie Institute and Saturday club cases (supra)".

Following the above order, we are inclined to set aside the order-in-original demanding duty and penalty under the Club and Association following the judicial discipline.

10. So far as demand of service tax on sale of statistical data (statistical service subscription) is concerned we find that the appellant provide various kind of data pertaining to automobile industry after collecting the same from various sources. This data is available to members as well as non-member on payment of certain charges. We find that it is a transaction of pure sale of data and thus no service tax can be charged on the same.

11. So far as demand of service tax on the revenue from the Business Exhibition Service is concerned, we are of the view that from the record produced by the appellant it appears that service tax has fully been discharged by M/s CII (who has actually organized the auto-expos) in this case. Since the M/s CII have

discharged their service tax liability, we are of the view that the same amount cannot be charged to service tax twice, however, there are some differences between the amount of revenue sharing certified by M/s CII and the amount which is shown as receipt from the such exhibition in balance sheets of the appellant for various financial years (which are also subject matter of the present show cause notices and order-in-originals). The learned Advocate has contended that the difference is primarily on account of certain grants received by them directly from the Government of India for promoting trade and industry. Since, this is only a matter of fact which is to be verified by the field level officers, we are inclined to send the proceedings for denovo adjudication only on the question of service tax demand under category of Business Exhibition Service. We also direct the Original Adjudicating Authority that he needs to take into consideration the certificates issued by M/s CII as well as the other grants which the appellant is claiming to have been received from the Government of India for facilitating the exhibition of automobiles for the promotion of the trade and industry for the country.

(Order pronounced in open court on 04/06/2018.)

(S.K. Mohanty)
Member (Judicial)

(C.L. Mahar)
Member (Technical)

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