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CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, MUMBAI

REGIONAL BENCH - COURT NO. I

Service Tax Appeal No. 86857 of 2015

(Arising out of Order-in-Original No. 17-18/STC-IV/SKS/15-16 dated 24.06.2015 passed by the Pr. Commissioner of Service Tax, IV Mumbai.)

M/s Knight Riders Sports Pvt Ltd. **.... Appellant**
612, 8th Floor, 15th Road, Santacruz West,
Mumbai-400 054.

Versus

Pr. Commissioner of Service Tax-IV, Mumbai **.... Respondent**
115, New Central, Excise Bldg,1
Churchgate, Mumbai-400 020.

Appearance:

Shri Sanjeev Nair, Advocate for the Appellant
Shri Nitin M Tagade, Authorized Representative for the Respondent

WITH

Service Tax Appeal No. 87295 of 2015
&
Service Tax Cross Objection No. 91221 of 2015

(Arising out of Order-in-Original No. 17-18/STC-IV/SKS/15-16 dated 24.06.2015 passed by the Pr. Commissioner of Service Tax, IV Mumbai.)

Pr. Commissioner of Service Tax-IV, Mumbai **.... Appellant**
115, New Central, Excise Bldg,
Churchgate, Mumbai-400 020.

Versus

M/s Knight Riders Sports Pvt Ltd. **.... Respondent**
612, 8th Floor, 15th Road, Santacruz West,
Mumbai-400 054.

Appearance:

Shri Nitin M Tagade, Authorized Representative for the Appellant
Shri Sanjeev Nair, Advocate for the Respondent

CORAM:

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

FINAL ORDER NO. A/86006 – 86007/2023

Date of Hearing: 27.02.2023

Date of Decision: 26.06.2023

Per: S.K. MOHANTY

Briefly stated, the facts of the case are that the M/s Knight Riders Sports Private Ltd., Mumbai (herein after referred to as 'appellants-assessee', for short) are incorporated as a Private Limited under the Companies Act, 1956. The appellants-assessee are operating a cricket team in the name and style of *Kolkata Knight Riders* (KKR) in the cricket tournament organised by the Board of Control for Cricket in India (BCCI). The tournament is popularly known as Indian Premier League (IPL). During the disputed period, the Service Tax Department initiated the show-cause proceedings against the appellants-assessee, seeking confirmation of service tax demands on various issues. The matter arising out of the show cause notices were adjudicated by the learned Principal Commissioner of Service Tax, Mumbai-IV vide Order-in-Original dated 24.06.2015 (for short, referred to as 'impugned order'), wherein the service tax demands were confirmed along with interest and also penalties were imposed on the appellants. The gist of the demands confirmed in the impugned order are summarised herein below in the form of a table:-

No.	Description	Amounts in Rs.				
		Demands as per 2 SCNs	Demands Dropped in O-in-O	Demands confirmed as per O-in-O	Demands paid	Appeal amount
(1)	(2)	(3)	(4)	(5)	(6)	(7)
Service Tax on revenue from BCCI						
A	Service Tax on Central Rights Income earned from BCCI	16,71,71,797	-	16,71,71,797	-	16,71,71,797
	Total	**16,71,71,797**	-	**16,71,71,797**	-	**16,71,71,797**
Service Tax under Reverse Charge Mechanism						
B	ST applicability on fees paid to foreign players (10% of the fee)	3,67,51,303	3,19,96,221	47,55,082	11,99,946	35,55,136
C	ST applicability on the fees paid to players' agents	20,13,565	-	20,13,565	-	20,13,565
D	ST on Management Consultancy, Design & Advertising Services	38,31,865	-	38,31,865	11,51,348	26,80,517
E	ST on fees paid to foreign coaches and support staff	1,75,62,397	1,75,62,397	-	-	-
	Total	**6,01,59,130**	**4,95,58,618**	**1,06,00,512**	**23,51,294**	**82,49,218**
CENVAT Credit Reversal						
F	CENVAT Credit reversal in relation to production of music album	11,24,636	-	11,24,636	11,24,636	-
G	CENVAT Credit reversal in relation to sale of tickets and Prize Money	2,13,57,472	-	2,13,57,472	2,01,92,396	11,65,076
	Total	**2,24,82,108**	**-**	**2,24,82,108**	**2,13,17,032**	**11,65,076**
Grand Total		**24,98,13,035**	**4,95,58,618**	**20,02,54,417**	**2,36,68,326**	**17,65,86,091**

Feeling aggrieved with the impugned order, the appellants-assessee have preferred this appeal before the Tribunal. Revenue has also filed an appeal against the impugned order, wherein the learned Adjudicating Authority has dropped or reduced the quantum of service tax demand as proposed in the show cause notices.

2. Learned Advocate appearing for the appellants-assessee submitted that central rights income earned from the BCCI is not subjected to levy of service tax and in this context, he has relied upon the decision of this Tribunal in the case of *KPH Dream Cricket Pvt. Ltd. vs. CCE, Chandigarh-I reported in 2020 (34) GSTL 456 (Tri-Chandigarh).* As regards applicability of service tax on the fees paid to foreign players, he submitted that the amount paid to the foreign players as fees cannot be subjected to levy of service tax under the taxable category of Business Support Service (BSS). He has relied upon the decision of co-ordinate bench of this Tribunal in the case of *Sourav Ganguly vs. Commissioner of Service Tax, Kolkata – 2020 (12) TMI 534 CESTAT* to support his stand. As regards fees paid to players' agent abroad, he submitted that the appellant had no contractual relationship with such agents and as such the payments made by the players to their respective agents cannot be subjected to levy of service tax in the hands of the appellant inasmuch as there is no relationship of service provider and receiver adjudged in such type of transaction. To support such stands, the learned Advocate has relied upon the decision of this Tribunal in the case of *KPH Dream Cricket Pvt. Ltd. (supra).*

2.1 With regard to confirmation of service tax demand of Management Consultancy, Design & Advertisement services, the learned Advocate stated that the appellants-assessee is contesting the service tax demand for the period 2009-2010 on the ground that during such disputed period, the IPL was played in South Africa and not in India and since the entire services were provided outside the territorial territory, service tax demand cannot be fastened on the them. He has relied upon the decision of this Tribunal in the case of

Genom Biotech Pvt. Ltd. Vs. Commissioner of Central Excise & Service Tax. Nashik - 2016 (42) STR 918 (Tri-Mumbai).

2.2 In response to the impugned order confirming the service tax demands on the fees paid to foreign coaches and supporting staff, learned Advocate submitted that the services are in the nature of commercial coaching and cannot be categorised as Business Support Service as per the definition contained under the Finance Act, 1994. He further submitted that since the Principal Commissioner himself as Adjudicating Authority has properly analysed the statutory provisions vis-a-vis the activities undertaken by the appellant and dropped the proposed demand, and the said order to the extent it has dropped the service tax demand on such ground is proper and justified.

2.3 On the issue of reversal of cenvat credit in context with production of music album, the learned Advocate fairly concedes that the appellants-assessee are not contesting such demand and the service tax amount attributable to such services has already been deposited. However, he pleaded for non-imposition for penalty inasmuch as the ingredients mentioned under Section 78 ibid are not available to the department for imposition equal amount of penalty on the appellant. He further submitted that since the issue pertains to reversal of cenvat credit under Rule 6 of the Cenvat Credit Rules, 2004, penalty in such circumstances cannot also be imposed on the appellants. In this context, he has also relied the judgment of Punjab and Haryana High Court in the case of *Commissioner of Central Excise, Ludhiana Vs. Sangrur Agro Ltd. - 2006 (202) ELT 835 (Tri-Delhi)* and upheld by the Hon'ble High Court reported in *2010 (254) ELT 25 (P&H).*

2.4 With regard to confirmation of Cenvat demand on sale of tickets and prize money, the learned advocate submitted that receiving the prize money for proper performance in the matches cannot be termed as a service inasmuch as there is no relationship exists with the service provider and service receiver in order to fall under the category taxable services of Business Support Service.

Thus, the appellant was not statutorily required to reverse any cenvat credit in respect of prize money.

3. On the other hand, learned Authorised Representative appearing for the Revenue reiterated the findings recorded in the impugned order and contesting the service tax demand dropped therein on the ground that such action of the Adjudicating Authority is not proper and justified.

4. Heard both sides and examined the case records.

5. The following seven issues arise out of the impugned order for consideration by the Tribunal:

(i) Whether receipt of the Appellant-assessee's share in the Central Rights Income is consideration for the alleged services rendered to BCCI-IPL in organizing the IPL tournament, and taxable as 'Business Support Services' ("BSS")?

(ii) Whether 10% of the payments made by Franchisee Company to the foreign players is taxable under the reverse charge mechanism ("RCM") as BSS on the basis that the players carry out promotional activities (incl. wearing uniforms with logos, etc.)?

(iii) Whether payments made to foreign service provider for management consultancy services are taxable under RCM under taxing entry for Management or Business Consultant's Service?

(iv) Whether costs incurred in marketing and PR activities outside India is taxable under the taxable service for BSS, on RCM?

(v) Whether the appellants-assessee is required to reverse common CENVAT Credit availed for providing taxable and exempt output service?

(vi) Whether 90% of payments made by Franchisee company to the foreign players is taxable under RCM as BSS on the basis that they carry out promotional activities (incl. wearing uniforms with logos, etc.)?

(vii) Whether 100% of payments by the company to foreign coaches and support staff is taxable under RCM as BSS on the basis that they carry out promotional activities?

5.1. With regard to the first issue whether, receipt of the appellant's share in the Central Rights Income should be considered as consideration as provision of the Business Support service, we find that the said issue has already been dealt with by the Co-ordinate Bench of this Tribunal, in the case of *KPH Dream Cricket Pvt. Ltd. Vs. CCE & ST, Chandigarh-I* (vice-versa), *2019 (5) TMI 1171 – CESTAT Chandigarh.* Upon consideration of such issue, the Tribunal by relying upon the decision of the Tribunal in the case of Mormugao Port Trust Vs. CCE – 2017 (48) STR 69 (Tri.-Mum.) has set aside the demand holding that in case of joint venture contract, there is neither an intention to render a service to the other partner(s) nor is there any fixed consideration *quid pro quo* for any particular service of a partner. It has further been held that a contractor-contractee or the principal-client relationship, which is the essential element of any taxable service, is absent in the case of the partners or co-venturers in a joint venture agreement. In the present case, since the demand of Rs.16,71,71,797/- in respect of Central Rights Income arising out of the franchise agreement cannot be considered as provision of any service between the members to the franchise agreement, we are of the view that such demand cannot be confirmed on the assessee-appellants.

5.2. As regards the second issue, regarding payment of service tax under the taxable category of Business Support Service by the assessee-appellants in the capacity of recipient of service under Reverse Charge Mechanism (RCM), it is not in dispute that the assessee-appellants have entered into an agreement with individual foreign players and other professionals as a franchisee, wherein they have engaged those players as a professional cricketer. The aforesaid agreement also provided for the players, to wear 'team clothing', to participate in media, sponsorship and the promotional activities of the franchisee. The learned Principal Commissioner in the impugned order had concluded that such activities of the players are in the nature of support service in marketing the franchisee's trademark/ logo and thus contribute to the promotional activities. Accordingly, in terms of specific clause in the agreement indicating

10% of the total fees being payable to the player, when he does not happen to play even a single match, thereby attributing this part of 10% as consideration for promotional activities confirmed the demand of service tax for an amount of Rs.47,55,082/- relying on the instructions of CBIC dated 26.07.2010, while dropping the demand on the balance 90% of fees attributing the same to sports activity of playing cricket. We find that the said issue 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*), *2020 (12) TMI 534 – CESTAT Kolkata,* wherein 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 Rs.47,55,082/- towards fees paid to foreign players on RCM basis and Rs. 20,13,565/- to the agents of foreign players are not sustainable.

5.3. The third issue is relating to reimbursement charges paid by the assessee-appellants to foreign service provider for providing professional, consultancy services proposed for levy of service tax as management or business consultant's service on RCM basis. We find that the said issue has already been dealt with by the Hon'ble Supreme Court, in the case of *Union of India Vs. Intercontinental Consultants and Technocrats Pvt. Ltd., 2018 (10) GSTL 401 (S.C.)*. Upon consideration of such issue, the Hon'ble Apex Court while dismissing the Revenue's appeal had observed as follows:

> *"21) Undoubtedly, Rule 5 of the Rules, 2006 brings within its sweep the expenses which are incurred while rendering the service and are reimbursed, that is, for which the service receiver has made the payments to the assessees. As per these Rules, these reimbursable expenses also form part of 'gross amount*

> *charged'. Therefore, the core issue is as to whether Section 67 of the Act permits the subordinate legislation to be enacted in the said manner, as done by Rule 5. As noted above, prior to April 19, 2006, i.e., in the absence of any such Rule, the valuation was to be done as per the provisions of Section 67 of the Act.*
>
> …
>
> *29) In the present case, the aforesaid view gets strengthened from the manner in which the Legislature itself acted. Realising that Section 67, dealing with valuation of taxable services, does not include reimbursable expenses for providing such service, the Legislature amended by Finance Act, 2015 with effect from May 14, 2015, whereby Clause (a) which deals with 'consideration' is suitably amended to include reimbursable expenditure or cost incurred by the service provider and charged, in the course of providing or agreeing to provide a taxable service. Thus, only with effect from May 14, 2015, by virtue of provisions of Section 67 itself, such reimbursable expenditure or cost would also form part of valuation of taxable services for charging service tax. Though, it was not argued by the learned counsel for the Department that Section 67 is a declaratory provision, nor could it be argued so, as we find that this is a substantive change brought about with the amendment to Section 67 and, therefore, has to be prospective in nature."*

In the present case before us, the disputed period for which demands were raised relate to 2008-2009 and 2011-2012, much prior to the amendment to Section 67 introduced w.e.f. 14.05.2015. Hence, the confirmation of demand for Rs.38,31,865/- in respect of reimbursable expenses to foreign service provider on RCM basis cannot be considered as there exists no legal provision for charging to service tax on such reimbursement charges, we are of the view that such demand cannot be confirmed on the assessee-appellants.

5.4. As regards fourth issue, whether costs incurred in marketing and Public Relations activities conducted outside India would be subjected to levy of service tax, we find that the identical issue was considered by the Co-ordinate Bench of this Tribunal, in the case of *KPH Dream Cricket Pvt. Ltd. Vs. CCE & ST, Chandigarh-I* (vice-versa), *2019 (5) TMI 1171 – CESTAT Chandigarh.* Upon consideration of such issue, the Tribunal had held *that the main object of the appellant-assessee is to promote game of cricket in India through IPL tournaments. For obtaining service of organizing the said tournaments cannot be treated a service is in nature of Business Support Service. Therefore, no service tax is leviable under the category of Business Support Service as discussed hereinabove*

in the preceding paragraphs, hence the demand of service tax is not sustainable. As the present case is identical in the factual matrix to the above case already decided by the Tribunal, we consider that there exists no ground to deviate from the above stand. Accordingly, we find that the confirmation of demand Rs.11,24,636/- towards service tax liability on marketing and Public Relations activities conducted outside India paid to foreign vendors on RCM basis is not sustainable.

5.5. The fifth issue is relating to the reversal of common credit incorrectly availed in relation to input services utilised for taxable and exempt output services quantified as Rs.2,13,57,472/-. The demand for reversal is in respect of appellant-assessee's revenue generated from stadium gate receipt, prize money received from BCCI-IPL and in-stadia sale i.e., stadium revenue. In this regard, we find that the issue has already been examined by Co-ordinate Bench of this Tribunal, in the case of *L Balaji and Others Vs. CCE & ST, Chennai* (vice-versa), *2019 (5) TIOL 1882 – CESTAT Mad. and M/s KPH Dream Cricket Pvt. Ltd. (supra).* Upon consideration of such issue, the Tribunal had held that no Cenvat credit is required to be reversed in the above situation as follows:

> In re- *L Balaji and Others*
>
> *"7.5 The next point urged on behalf of the assessees is that the working of the taxable value where the Revenue sought to include, for the year 2011-12, the prize money. It is not disputed by the Revenue that the prize money was not given by its franchisee, it's rather the money received from BCCI directly for winning and not towards any services. Hence, we are of the view that the prize money could never be included in the taxable value. But, however, since we are holding that there was no service at all, the above question is just academic."*
>
> In re-*KPH Dream Cricket Pvt. Ltd. (supra).*
>
> *"3. The demand sought to be recovered on account of gate receipts collected by the appellant-assessee terming it that they have provided any exempted service, therefore, in terms of Rule 6 (3) (i) of Cenvat Credit Rules, 2004, they are required to reverse the amount.*

> *34. We find that the amount has been received by the appellant as the sale of ticket for cricket tournament which is not service, therefore, when it is not the service, it cannot be termed as service, no service tax is required to be reversed. Further, for the period 2010-12, the appellant-assessee has also reversed the said amount, therefore, no demand is sustainable on that account.*
>
> *35. In view of the above discussion, we hold that the demands of service tax are not sustainable against the appellant- assessee. Therefore, the demands confirmed by way of impugned order are set aside."*

Thus, the Tribunal held that the demand of service tax is not sustainable against the appellants. We also find that the explanation 3 to Rule 6(1) of the Cenvat Credit Rules, 2004 was amended vide notification No. 13/2016-C.E. (NT) dated 01.03.2016, wherein the 'exempted service' was expanded to include 'an activity which is not a service as defined under Section 65B (44) of the Finance Act, 1994' w.e.f. 01.04.2016, for which reversal of cenvat credit is required. Hence, prior to this there was no legal requirement legally binding an assessee to reverse cenvat credit of inputs or inputs services taken on such activities which are not services under the scope of the said Finance Act, 1994. Considering the above legal position in respect of Cenvat Credit Rules, 2004 and 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 Rs.2,13,57,472/- towards common Cenvat credit reversal is not sustainable.

5.6. The sixth issue in this case, which was raised in the appeal filed by the Revenue, is that 90% of payments made by company to the foreign players is taxable under RCM as BSS on the basis that they carry out promotional activities (incl. wearing uniforms with logos, etc.), but was wrongly dropped by the learned Principal Commissioner in the impugned order. The issue has been addressed in a number of cases earlier by Co-ordinate Benches of the Tribunal and in the case of *M/s KPH Dream Cricket Pvt. Ltd. (supra)* it was clearly held that the main activity of players, who were engaged under a contract by the appellants-assessee, is to play cricket apart from engagement of promotional activities which are ancillary to the

main activity of playing cricket. On drawing support from various decisions held in favour of the appellants-assessee, the Tribunal held in this case that on player’s fee, no service tax is payable and upheld the decision of the Commissioner in rightly dropping the demand of service tax on player’s fees. We find that the instant case before us is covered by the decision of the Tribunal in the above case, and thus we donot find any merit for interfering with the decision of the learned Principal Commissioner in dropping the demand of service tax in the impugned order.

5.7. On the seventh issue as to whether 100% of payments by the company to foreign coaches and support staff is taxable under RCM as BSS on the basis that they carry out promotional activities (incl. wearing uniforms with logos, etc.), we find that the issue has already been addressed in detail in the impugned order by the learned Principal Commissioner concluding that the activity of coaches and also support staff clearly stands out distinctly different as coaching service provided in relation to sports and is not covered Business Support Service; further he concluded there exists a specific category for levying such category of services, i.e., ‘commercial training or coaching centre’. However, as the coaching in the filed of sports has been specifically excluded from the applicability of service tax vide the definition of ‘commercial training or coaching centre’ under section 65(27) of the Finance Act, 1994, and as the service of coaching is not provided by an centre but an individual coach and support staff, he concluded that the service tax is not chargeable on such activity. Further, in this case the fees pertains to coaching the cricket players playing for the team and the amount paid is attributable to the coaching service or support service provided by them and thus service tax cannot be demanded on these fees and services as in the case of cricket players, as sports coaching and support staff service are exempt. In view of the clear findings recorded in the impugned order, we find that there is no ground for interfering with the order of the learned Principal Commissioner. Thus we find that the demand of service tax on this issue is not sustainable and appeal made by the Revenue does not survive.

6. On the basis of above discussions and findings recorded in the preceding paragraphs at 5.1 to 5.5, we are of the considered view that the impugned order of Principal Commissioner of Service Tax, Mumbai-IV confirming the adjudged demands are liable to be set aside as being not sustainable in law and therefore the appeals filed by the appellants-assessee is allowed. Further, on the basis of our findings at paragraphs 5.6 and 5.7, we do not consider it necessary to interfere with the orders of the learned Principal Commissioner of Service Tax, Mumbai-IV in the impugned order and the appeal preferred by the Revenue is dismissed as lacking merits.

7. In view of the above, we set aside the impugned order passed by the Principal Commissioner of Service Tax, Mumbai-IV to the extent it had confirmed the adjudged demands on the appellants-assessee. Appeal filed by the Revenue is dismissed.

8. Both the appeals are disposed of in above terms.

9. Cross-objection filed by the appellant-assessee against Department's appeal also stands disposed off.

(Order pronounced in open court on 26.06.2023)

(S.K. Mohanty)
Member (Judicial)

(M.M. Parthiban)
Member (Technical)

Sinha