IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHENNAI

REGIONAL BENCH – COURT NO. I

Service Tax Appeal No. 41520 of 2013

(Arising out of Order-in-Original Sl. No. 06/2013-Commr. dated 29.03.2013 passed by the Commissioner of Central Excise, Customs and Service Tax, 6/7, A.T.D. Street, Race Course Road, Coimbatore – 641 018)

M/s. Vodafone Idea Limited **: Appellant**
[Formerly known as 'M/s. Vodafone Cellular Limited']
No. 1045/1046, Avinashi Road,
Coimbatore – 641 018

VERSUS

The Commissioner of Central Excise, Customs and Service Tax **: Respondent**
6/7, A.T.D. Street, Race Course Road,
Coimbatore – 641 018

APPEARANCE:

Shri Raghavan Ramabadran, Advocate for the Appellant

Shri M. Ambe, Deputy Commissioner for the Respondent

CORAM:

HON'BLE MR. P. DINESHA, MEMBER (JUDICIAL)
HON'BLE MR. VASA SESHAGIRI RAO, MEMBER (TECHNICAL)

FINAL ORDER NO. 40474 / 2023

DATE OF HEARING: 03.05.2023

DATE OF DECISION: 23.06.2023

Order : [Per Hon'ble Mr. Vasa Seshagiri Rao]

M/s. Vodafone Idea Limited (formerly known as 'M/s. Vodafone Cellular Ltd.'), Coimbatore, have filed this appeal against the Order-in-Original Sl. No. 06/2013-Commr. dated 29.03.2013 passed by the Commissioner of Central Excise, Customs and Service Tax, Coimbatore confirming the demand of Service Tax of Rs.59,12,035/- under proviso to Section 73(1) of the Finance Act, 1994 along with recovery of appropriate interest under Section 75 of the Finance Act, 1994, imposing penalty under Section 77(2) for not filing S.T.-3 returns within

appropriate time and equal penalty under Section 78 of the Finance Act, 1994.

2.1 The appellant are a telecommunication network provider rendering telecommunication services in Tamil Nadu (except Chennai), Maharashtra (except Mumbai) and State of Kerala. The appellant is a subsidiary of M/s. Vodafone India Limited, which carries on pan India operations through other group concerns such as M/s. Vodafone Digilink Limited, M/s. Vodafone Essar Limited, etc., for providing network services within specially demarcated telecommunication circles.

2.2 On a perusal of the books of accounts of the appellant, the Revenue noticed that the appellant had incurred an expenditure of Rs.5,19,49,020/- on sponsorship services during the period from 01.05.2006 to 31.03.2010. Scrutiny of the S.T.-3 returns filed by the appellant for the relevant period indicated that appropriate Service Tax was not paid by the appellant in respect of the sponsorship service received by them, leading to the issuance of a Show Cause Notice vide SCN Sl.No.:07/2011-Commr. dated 22.09.2011, which came to be adjudicated demanding Service Tax and imposing penalties, as indicated at paragraph 1 of this order.

3.1 The Ld. adjudicating authority has held that the appellant received the services under the category of "sponsorship services" as defined under Section 65(99a) of the Finance Act, 1994, which has not been disputed by them. The points of dispute are regarding the provisions created as well as the taxability of certain portions of services received in view of the provisions of Section 65(105)(zzzn) of the Act, which read as under prior to 01.07.2010: -

> *"taxable service means any service provided or to be provided to any body corporate or firm, by any person receiving sponsorship, in relation to such sponsorship, in any manner, but does not include services in relation to sponsorship of sports events"*

3.2 The Ld. adjudicating authority, after examining a copy of the Official Partner Agreement entered into between the Board of Control for Cricket in India (BCCI) and M/s. Vodafone Essar Limited and seven other Vodafone group companies including the appellant herein, came to the conclusion that 'league' is a composition of the teams which play the Twenty20 matches and as such, sponsorship of the league is confined to sponsoring of the teams which are its intrinsic components and so, sponsorship of the Twenty20 Cricket League could not be equated to the sponsoring of a sports event. To arrive at this conclusion, the Ld. adjudicating authority has relied on the Board's letter in Dy.No.42/Comm(ST)/2008 dated 26.07.2010, the relevant portion of which is extracted below for ready reference: -

> *"1. Sponsorship Service: Prior to the Finance Act, 2010, sponsorship service did not include "services in relation to sponsorship of sports events". On the basis of this exclusion, service tax has largely been not paid on the sponsorships that have been done under IPL. The standard argument is that the sponsorship contract falls within the exclusion clause…… The argument taken is that the exclusion clause can be invoked only for sponsorship of "sports events" a term which naturally encompasses within its ambit sponsorship of games, matches or tournaments. A team by in itself is not a "sports event". A team is an entity while "sports event" is an activity and so team sponsorship would fall outside the orbit of the exclusion clause.*
>
> *It is felt that the sponsorship of IPL is not sponsorship of any sports event, since IPL in itself not sports event but an entity of franchisee teams and therefore it is taxable….*
>
> *…."*

3.3 He has further held that: -

(i) Twenty20 Cricket League which has been established by the BCCI-IPL, is not a cricketing event and as such, the services received by the appellant would be covered under the ambit of taxable service under the category of "sponsorship service".

(ii) No evidence has been submitted by the appellant for having sponsored the ICC Cricket World Cup and as such, taxability of services received could not be examined.

(iii) The principal company had agreed to sponsor and also made the payment and it is they who received the service and thus the liability to pay as per Rule 2(1)(d)(viii) of the Service Tax Rules, 1994 is not on the group company though they are the beneficiaries of the brand. The principal company and the appellant are all separate legal entities and so, are required to maintain separate books of accounts under the law and also that the principal company would have indicated the above expenses in their books of account and would have also paid the appropriate Service Tax thereupon; in the fitness of things, it was for VECL (appellant) to take CENVAT Credit in case they are the beneficiaries.

3.4 M/s. Vodafone India Limited, Mumbai, M/s. Vodafone Cellular Limited, Pune had paid the sponsorship amounts on behalf of VECL/appellant, as given in the table below, and for reimbursement of the same, debit notes have been raised:

Year	**Debit Note received from**	**Amount (in Rs.)**	**Sponsored event**
2007-08	VIL, Mumbai	2,53,36,500/-	ICC Cricket World Cup
2007-08	VCL, Pune	1,00,98,000/-	IPL Cricket Tournament
Total		3,54,34,500/-	

3.5 The Ld. adjudicating authority arrived at the conclusion that the amount of Rs.3,54,34,500/- which was paid purportedly by the appellant towards sponsorship of cricket tournaments namely, ICC World Cup and Indian Premier League, would be subject to levy of Service Tax under the provisions of law and the same is demandable from the appellant.

4.1 In the grounds-of-appeal and during the hearing, the appellant has submitted that during the period from 01.05.2006 to 31.03.2010, they were sponsoring events under the brand name 'Vodafone'. In August 2008, the BCCI had executed an Agreement with the appellant for sponsoring the Indian Premier League Twenty-20 (IPL). They have not remitted the Service Tax on the sponsorship of IPL and ICC Cricket World Cup because throughout the period of dispute, the taxable service of 'sponsorship' expressly excluded sponsorship of sports events.

4.2 Shri Raghavan Ramabadran, Ld. Advocate appearing for the appellant, has submitted that the appellant maintained their books of account as per the Generally Accepted Accounting Principles (GAAP) and accordingly, created provisions in their books of account towards anticipated expenses along with the expenses actually incurred during the financial year for which the bills would be received only during the subsequent months when the next financial year would commence; such provision of expenses was done in March during the closure of accounts for the financial year based on estimates and were reversed subsequently in April and also that as and when the bills were received in subsequent months, the expenses were booked. He has argued that the provisions are not in relation to any actual expenses incurred or any consideration received for services.

4.3.1 The Ld. Advocate has submitted that the issue is no longer *res integra* and has been settled in favour of the assessee already and no Service Tax is payable on the

sponsorship of ICC World Cup and IPL as during the impugned period, sports events were specifically excluded from the purview of sponsorship services; the impugned order has confirmed the demand on the ground that the appellant has only sponsored a team in the IPL as opposed to sponsoring a tournament.

4.3.2 He has relied on the decision in the case of *M/s. Vodafone Cellular Ltd. v. Commissioner of Central Excise, Pune-III [2017 (51) S.T.R. 26 (Tri. – Mum.)]* wherein the Tribunal had basing on the decision in the case of *M/s. Hero Motorcorp Limited v. Commissioner of Service Tax, Delhi [2013 (32) S.T.R. 371 (Tri. – Del.)]* which was affirmed by the Hon'ble Supreme Court as reported in *2016 (44) S.T.R. J59 (S.C.)*, held that no Service Tax demand on sponsorship of sports events could be fastened on the appellant.

4.3.3 The appellant further relied on the following decisions which have held that prior to 01.07.2010, sponsorship of teams in the IPL will be excluded from the Service Tax Net: -

(i) DLF Ltd. v. Commissioner of Service Tax, Delhi [2012 (27) S.T.R. 512 (Tri. – Del.)]

(ii) Jaiprakash Associates Ltd. v. Commissioner of Service Tax, Delhi [(2014) 41 taxmann.com 256 (New Delhi – CESTAT)]

(iii) KPH Dream Cricket Pvt. Ltd. v. Commissioner of C.Ex. & S.T., Chandigarh-I [2020 (34) G.S.T.L. 456 (Tri. – Chan.)]

4.3.4 The Ld. Advocate has also submitted that the Finance Act, 2010 substituted Section 65(105)(zzzn) to withdraw the exclusion for sponsorship of sporting events with effect from 01.07.2010, but the entire demand in this appeal is for the period prior to 01.07.2010 and as the said amendment was not made effective retrospectively, the demand cannot sustain for the impugned period.

4.3.5 In support of this contention, the appellant relied on the decision in the case of *CIT v. Vatika Township [(2015) 1 SCC 1]* which held that a legislation which modified rights or imposes new duties is presumed to have not intended retrospective operation unless a contrary intention appears.

4.3.6 Reliance was also placed on the decision of the Hon'ble Madras High Court in the case of *Commissioner of Cus., C.Ex. & S.T., Coimbatore v. M/s. Sri Kumaran Alloys (P) Ltd. [2019 (365) E.L.T. 305 (Mad.)]* for the proposition that an amendment to a statute which has been given prospective effect cannot be used as an aid to interpret the statutory provision which existed prior to the amendment, unless and until the amendment is held to be clarificatory.

4.3.7 He has also submitted that the amended Section 65(105)(zzzn) of the Finance Act, 1994 would take effect prospectively as it has expanded the very scope of sponsorship service. Reliance has been placed on the Circular No. 334/1/2010 dated 26.02.2010 issued by the C.B.E.C., which clarified, at paragraphs 3.1 and 7.3, that the Service Tax Net was being expanded to include sponsorship of sports events.

4.3.8 He has vehemently put forth that the reliance in the impugned order on an extract from the Board's letter in Dy.No.42/Comm(ST)/2010 dated 26.07.2010 is misplaced as the established position of law is that sponsorship of IPL teams is no different from sponsoring sports events.

Assuming without admitting that the appellant is liable to tax on sponsorship events, no tax is payable on provisional entries made in the books of accounts:

4.4.1 The appellant has contended that the impugned order has wrongly confirmed the demand of Service Tax on provisional entries created in the appellant's books by invoking the principles of valuation for transactions between associated enterprises in Explanation (c) to

Section 67 of the Act. The basis for confirmation was receipt of debit notes from M/s. Vodafone India Limited, Mumbai and M/s. Vodafone Cellular Limited, Pune and it was concluded that the provision of amounts was effected in connection with their associated enterprises.

4.4.2 The appellant submitted that the transaction is not the one between associated enterprises because the provision is not in the name of any person and in any case, it is not in the name of any associated enterprise; that even assuming without accepting that the transaction was between the associated enterprises, such amounts would not be taxable under reverse charge mechanism. It is also put forth that if the transaction was between associated enterprises, then the person liable to pay tax would be the service provider and not the appellant.

4.4.3 It is their contention that the provision for the sponsorship expenses were made only in the Sponsorship Ledger and not in the account of the associated enterprises and as such, there is no merit in the finding in the impugned order that the provisioned amount is subject to levy of Service Tax according to Explanation (c) to Section 67 of the Act. Further, Explanation (c) to Section 67 of the Act uses the term "payment" which would mean the actual receipt of payment and not mere provisions created in the books of account, which are subsequently reversed and that this does not constitute consideration in the first place.

4.4.4 The appellant has relied on the decision of the Hon'ble Karnataka High Court in the case of *M/s. Karnataka Power Transmission Corporation Limited v. DCIT [(2016) 67 taxmann.com 259 (Karnataka)]* wherein it was held that where the assessee has made provision towards contingent payment of interest on belated payment to its suppliers but has never paid the amount to the suppliers and has thereby made corresponding entries in the books of accounts, there would be no liability to deduct tax under Section 194A of the Income Tax Act, 1961 on such amount as no income is

accrued to the suppliers; the decision has also held that the term "income" would include actual receipt of income and not mere provisions created in the books of account which are subsequently reversed.

Invocation of extended period of limitation:

4.5 On the issue of invoking the extended period of limitation, the appellant has submitted that the entire demand is based on the Service Tax returns duly filed, as is evidenced in the Show Cause Notice. Reliance is placed on the decision in the cases of *Commissioner of Central Tax v. M/s. Zee Media Corporation Ltd. [2018 (18) G.S.T.L. 32 (All.)]* and *Commissioner of Central Tax, Bangalore v. Lalit Ashok [2022 (66) G.S.T.L. 314 (Kar.)]* to argue that extended period cannot be invoked in cases where the demand has been computed using the documents furnished by an assessee.

Imposition of penalty:

4.6 The Ld. Advocate has submitted that benefit of Section 80 of the Act may be extended, relying on the decision of the Hon'ble Madras High Court in the case of *Commissioner of Central Excise, Coimbatore v. M/s. Busy Bee [(2014) 51 taxmann.com 488 (Madras)]* wherein it has been held that where the assessee was under the *bona fide* impression that the service provided was not liable to tax, the same would constitute 'reasonable cause' for failure to pay Service Tax. Thus, it is submitted that penalties are required to be waived under Section 80 of the Act.

5. The Ld. Authorized Representative Shri M. Ambe (Deputy Commissioner) representing the Revenue has taken us through the findings of the Ld. adjudicating authority in detail to justify the Service tax confirmed and penalties imposed.

6. We have considered the submissions made by both sides and have gone through the records as available in this appeal.

7.1 The main issue that is required to be decided in this appeal is: whether the amount paid by the appellant towards sponsorship of cricket tournaments namely, ICC Cricket World Cup and Indian Premier League (IPL) can be subjected to levy of Service Tax or not.

7.2 The other issues regarding invoking of extended period of limitation and whether the appellant would be liable for imposition of penalty under Sections 77 and 78 of the Finance Act, 1994 can be considered once the main issue is examined as to the taxability or otherwise for the sponsorship of cricket tournaments.

8.1 During the impugned period, "sponsorship" was defined under Section 65(99a) of the Finance Act, 1994 to mean: -

> *"(99a) "sponsorship" includes naming an event after the sponsor, displaying the sponsor's company logo or trading name, giving the sponsor exclusive or priority booking rights, sponsoring prizes or trophies for competition; but does not include any financial or other support in the form of donations or gifts, given by the donors subject to the condition that the service provider is under no obligation to provide anything in return to such donors;"*

8.2.1 Section 65(105)(zzzn) of the Act, as it stood prior to 01.07.2010, is reproduced below: -

> *"taxable service means any service provided or to be provided to any body corporate or firm, by any person receiving sponsorship, in relation to such sponsorship, in any manner, but does not include services in relation to sponsorship of sports events"*

8.2.2 From 01.07.2010 onwards, Section 65(105)(zzzn) came to be amended, as under: -

> *"taxable service means any service provided or to be provided to any person, by any other person receiving sponsorship, in relation to such sponsorship, in any manner;"*

8.2.3 From the above, what has to be decided in this appeal is whether the sponsorship received is relating to sponsorship of sports events or not. The appellant has sponsored IPL Cricket tournament and ICC Cricket World Cup during the impugned period. Thus, whether sponsoring of IPL and ICC Cricket World Cup can be equated with sponsoring of sports events or not is the issue involved for resolution of dispute in this appeal.

9. We find that the issue is no longer *res integra* and is settled in favour of the appellant. In many decisions of the Tribunal, it has been held that no Service Tax is payable on sponsorship of IPL and ICC cricket tournaments during the impugned period.

9.1 In the case of *M/s. Hero Motorcorp Limited v. Commissioner of Service Tax, Delhi [2013 (32) S.T.R. 371 (Tri. – Del.)]*, the Tribunal, Delhi has held that the expression "in relation to" has a very wide connotation and the assessee's activity of sponsorship was in relation to sports events and so, not liable to Service Tax:

> *"10. In our considered view the reasons recorded by the adjudicating authority are misconceived and unsustainable. Under the agreement with GMR the appellant had sponsored (for the relevant period) the Delhi Daredevils team which was owned by GMR (under a franchise agreement with BCCI/IPL. Delhi Daredevils team was sponsored in the context of the participation of this team in the T-20 league matches. The several rights accruing to the appellant under the sponsorship agreement (adverted to above) clearly indicate that sponsorship was neither of BCCI - IPL; nor GMR, the sponsorship was clearly of the GMR owned Delhi Daredevils team in relation to participation of such team in the IPL T-20 cricket tournament. The enumerated bouquet of benefits accruing to the appellant under the agreement such as printing; player's appearances; motorcycle display; merchandise; motorcycle for promotion; and participative rights in prize presentation; championship tournaments; celebrity events; website/blog entitlement; and marketing plans by GMR, clearly establish that the sponsorship is of the GMR owned Delhi Daredevils team in relation to its participation in the T-20 tournament.*
>
> *11. The sponsorship agreement is in our considered view a clear commercial transaction, the underlying purpose being the assumption that since BCCI-IPL-T-20 matches generate huge public viewership, either directly*

at the venues or through audio visual and print media as well, the appellant's association with the T-20 sports event through Delhi Daredevils team would showcase the appellant's presence in its core business as a manufacturer of two wheeler motorbikes. It is neither the case of the adjudicating authority as revealed in the adjudication order nor the case of Revenue before this Tribunal that the sponsorship agreement was entered into with GMR either to sponsor GMR or to sponsor BCCI/IPL without reference to the T-20 fixtures. We are not persuaded by any material on record that a huge amount of Rs. 4,80,00,000/- (for three years) was expended by appellant for deriving any commercial benefit out of its association with either GMR or BCCI/IPL alone. We are also not persuaded to infer that GMR and/or BCCI-IPL by themselves and unrelated to the T-20 cricket tournament/event would have any audience/viewership interest or footfall as to have any commercial utility whatsoever to the appellant. The sponsorship agreement is thus for sponsoring the T-20 sports event and not for sponsoring the owner of the Delhi Daredevils owner or the BCCI - IPL.

12. The conclusion recorded by the adjudicating authority, is in our considered view based on a fundamental misconception of the purpose of the sponsorship agreement. The conclusion that under the agreement appellant sponsored GMR, by predicating this inference on the singular circumstance that GMR was other party to the agreement, overlooking the terms and conditions of the agreement, constitutes a fatal infirmity of analysis, which invalidates the adjudication order.

13. The relevant clauses of the relevant statutory provision [Section 65(105)(zzzn)] (as it stood at the relevant time) reads "Taxable service" means any service provided or to be provided" to any body corporate or firm, by any person receiving sponsorship, in relation to such sponsorship, in any manner, but does not include services in relation to sponsorship of sports events. Sponsorship is defined in Section 65(99a) of the Act and its essential ingredients are defined to include naming the events after the sponsor, display the sponsor company logo or trade name, giving the sponsor exclusive or priority booking rights, and sponsoring prizes or trophies for competition but excluding any financial or other support in the form of donations or gifts given by the donors subject to the condition that the service provider is under no obligation to provide anything in return to such donor. The agreement in issue (between GMR and the appellant) clearly constitutes sponsorship. That is also the admitted position, since that is the basis for initiation of proceedings leading to the assessment of the appellant's liability to service tax under provisions of Section 65(105)(zzzn). ***Since the sponsorship agreement, in our considered view falls within the exclusionary clause i.e. the clause which excludes sponsorship services in relation to sports events, the appellant is clearly immune to the charge of service tax.*** *It is a settled principle of statutory construction that the phrase "in relation to" is indicative of expansive intention. As pointed out in Doypack Systems (Pvt) Ltd. v. Union of India reported in 1988 (36) E.L.T. 201 (S.C.). The*

expression "in relation to" is a very broad expression. These are words of comprehensiveness which might both have a direct significance as well as indirect significance depending on the context. The Supreme Court explained that the said expression connotes "concerning that" and "pertaining to", are expressions of expansion and not contraction.

14. Shri Amresh Jain, ld. DR contends on behalf of Revenue that sponsorship was only of a team and not of sport events and that the amounts paid by the appellant to GMR fall outside the exclusionary clause of the provision. This contention is stated to be rejected. Under Article 265 of the Constitution no tax could be levied without legislative authority. A legislative provision is thus the sine qua non for a legitimate levy of tax. The relevant legislative provision must thus receive a strict construction. A true and fair construction of the relevant legislative provision, in accordance with settled and applicable principles of statutory interpretation is therefore the non-derogable obligation of an executor/interpretator of legislation. It is also settled principle of statutory interpretation that where the verbal formula of a legislative provision on its grammatical construction corresponds to the legal meaning of the expression used, full faith and unreserved fidelity must be accorded to the provision.

15. We notice that the expression "in relation to" is understood to have an extensive connotation, in several decisions apart from Doypack Systems (Pvt.) Ltd. The same view is reiterated in Kasilingam v. P.S.G. College of Technology - AIR 1995 SC 1395 and in Karnataka Power Transmission Corporation v. Ashok Iron Works Pvt. Ltd. - (2009) 3 SCC 240.

16. On the aforesaid analysis, the appellant is immune to levy and collection of service tax under Section 65(105)(zzzn) of the Finance Act, 1994. Consequently, the impugned adjudication order dated 30-6-2011 cannot be sustained and is accordingly quashed. The appeals are allowed. There shall however be no order as to costs."

(Emphasis supplied)

9.1.2 We find that the above decision has been affirmed by the Hon'ble Supreme court vide its order in *Commissioner v. M/s. Hero Motocorp Limited [2016 (44) S.T.R. J59 (S.C.)]* and subsequently, followed by the Tribunal, Mumbai in *M/s. Vodafone Cellular Ltd. v. Commissioner of Central Excise, Pune-III [2017 (51) S.T.R. 26 (Tri. – Mum.)]* wherein it has been held that, for the period under dispute, no Service Tax demand on sponsorship of sports events can be fastened on the appellant.

9.2 The ratio of the above judgement has been followed in the following cases which have held that prior to 01.07.2010, sponsorship of teams in IPL would be excluded from the Service Tax Net: -

(i) DLF Ltd. v. Commissioner of Service Tax, Delhi [2012 (27) S.T.R. 512 (Tri. – Del.)]

(ii) Jaiprakash Associates Ltd. v. Commissioner of Service Tax, Delhi [(2014) 41 taxmann.com 256 (New Delhi – CESTAT)]

(iii) KPH Dream Cricket Pvt. Ltd. v. Commissioner of C.Ex. & S.T., Chandigarh-I [2020 (34) G.S.T.L. 456 (Tri. – Chan.)]

10. In view of the above discussion, we find that the issue in dispute in this appeal is squarely covered by the decisions discussed *supra* and so, we order to set aside the impugned order. We find that the provisions made in the books of account by the appellant as per the GAAP towards sharing the expenditure on account of receipt of sponsorship services cannot be subjected to tax as the ingredients for levy of tax are not fulfilled in the absence of any provision of service and when payments were made only in relation to sponsorship of the IPL Cricket tournament.

11. As the appeal succeeds on merits, there is no need to examine the issue of invoking the extended period or imposition of penalties.

12. The appeal is allowed with consequential relief, if any, as per the law.

(Order pronounced in the open court on **23.06.2023**)

Sd/-
(VASA SESHAGIRI RAO)
MEMBER (TECHNICAL)

Sd/-
(P. DINESHA)
MEMBER (JUDICIAL)

Sdd