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IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHENNAI

REGIONAL BENCH – COURT NO. III

Service Tax Appeal Nos. 203 and 204 of 2012

(Arising out of Order-in-Original No. 36 & 37/2011 dated 30.12.2011 passed by Commissioner of Central Excise, M.H.U. Complex, Nandanam, Chennai – 600 035)

M/s. India Cements Ltd., **...Appellant**
'Dhun' Building,
No. 827, Anna Salai,
Chennai – 600 002.

Versus

Commissioner of Central Excise, **...Respondent**
Chennnai II Commissionerate,
MHU Complex,
No. 692, Anna Salai, Nandanam,
Chennai – 600 035.

APPEARANCE:

For the Appellant : Ms. Radhika Chandrasekar, Advocate

For the Respondent : Mr. R. Rajaraman, Assistant Commissioner / A.R.

CORAM:

HON'BLE MS. SULEKHA BEEVI C.S., MEMBER (JUDICIAL)
HON'BLE MR. M. AJIT KUMAR, MEMBER (TECHNICAL)

DATE OF HEARING : 28.06.2023
DATE OF DECISION : 04.08.2023

FINAL ORDER Nos. 40655-40656/ 2023

Order : Per Ms. SULEKHA BEEVI C.S.

Brief facts are that M/s. India Cements Ltd., the appellant herein, are engaged in manufacture of cement and have manufacturing units at Tamil Nadu, Andhra Pradesh & Maharashtra. The cement manufactured by them is sold under the brand names 'Coromandel Cement', 'Sankar

Cement', 'Rasi Cement', etc.,. They have Central Excise registration as well as Service Tax registration. The appellant is registered for various taxable services, and also registered as Input Service Distributor.

2.1 On information that the appellant had not discharged service tax under the category of sale of space for Advertisement, Business Support Service, etc., the Survey, Intelligence and Research (SIR) branch of Service Tax Commissionerate, Chennai conducted investigations. It was noted as under:

2.2 The Board of Cricket Control of India (BCCI), which is the Apex governing body for cricket in India, has its headquarters at Mumbai. BCCI is registered as a society on 25.09.2006 under the Tamil Nadu Societies Registration Act, 1875. During 2007, BCCI with an idea to pursue its commercial activities proposed a separate unit known as Indian Premier League (IPL) for conduct of 'Twenty 20 Cricket Competition'. The IPL was proposed to be Franchise-model wherein corporates and sponsors would be allowed to buy and run teams for conduct of the IPL matches. Based on bidding, BCCI-IPL during the last week of January 2008 finalised 8 franchisees, out of which the appellant was one franchisee. The appellant selected its franchisee name-'Chennai Super Kings'.

2.3 After finalization of franchisees, BCCI collected list of agreed contract players to play for each franchisee, which included players of Indian origin and foreign origin. BCCI also fixed base price for the players under the process of auction conducted on 07.02.2009 and 19.01.2010 in respect of IPL season 2 &3. The appellant was successful in bidding for contracted players including foreign origin and completed a team of 28 players, 6 coach/supporting staff for IPL season 2, and 33 players and 7coach/supporting staff for IPL season 3.

2.4 The Department requested the appellant *vide* letters dated 26.07.2010 and 13.09.2010 to furnish franchisee agreement, other documents and details for verification. As per the franchise agreement, the BCCI-IPL (Franchisor) owns the Central rights which comprises of Media rights, Umpire sponsorship rights, Title sponsorship rights, Official sponsorship rights, right to sell stadium advertising, etc.,. The appellant Franchisee right include:-

- Shirt sponsorship right in respect of the team
- Official supplier ship rights in respect of the team
- Corporate entertainment/premium seating rights at the Stadium during league matches
- Franchisee licensing
- Retain all gate receipts in respect of specific matches
- To sell merchandise at the Stadium
- Other rights in relating to the Team (not conflicting with the Central Rights)

2.5 It was noted that BCCI in addition to the Central Right Income in each year has to pay to the Franchisee, 87.5% of all Central Licensing Income and BCCI was to retain the balance 12.5% of such income. Again, the Franchisee in addition to the Franchisee payment, in each year shall pay to BCCI-IPL 12.5% of all licensing income, which includes income received by the Franchisee from the sale, license or other grant of rights in respect of franchisee licensed products.

2.6 As per the agreement, the Franchisee is liable to pay to Franchisor (BCCI) consideration for the period 2008-2017 which is:-

- A sum of US$ 6.37 Million (equivalent to Rs.25,48,00,000/- calculated at exchange rate of Rs.40 per US$), payable each year and to be paid on the date of the first match of the league in such year
- League Deposit which is a sum of US$ 2.73 Million (equivalent to Rs.10,92,00,000/-), payable before 2nd January in each year

2.7 Thus as per the Franchisee Agreement, the appellant (Franchisee) gets income from

(a) Income arising out of Franchisee Partner Agreement

(b) Gate receipts

(c) Payment of Central Rights income from BCCI-IPL

(d) Franchisee Licensing Income

2.8 The appellant is liable to pay BCCI-IPL the franchisee consideration after adjustment of the league deposit and performance deposit and are also eligible to earn various incomes including receipt of their share of Central Licence Income and Central Rights Income from BCCI-IPL. Appellant is also liable to pay to BCCI-IPL any income earned from Franchisee Licensing.

2.9 These details and documents revealed that several taxable services were rendered / received by appellant. It appeared to the Department that the entire transactions relating to IPL including conduct of matches is done with a view to promote the business/commercial interest of the franchisees (including the appellant) and therefore the share of Central income and other sums earned by appellant from BCCI-IPL is consideration for providing Business Support Services (BSS) to BCCI-IPL. As the appellant supports the commercial activities of IPL, the amount received by appellant from BCCI-IPL is taxable under the category of BSS which is defined in Section 64 (104c) of the Finance Act, 1994. The appellant had not discharged the service tax on such receipts from BCCI-IPL.

2.10 Secondly, scrutiny of the ledgers of appellant indicated that they accounted income from sale of tickets. The tickets were sold by the appellant through various methods like Gate sales, Counter sales, Showroom sales, etc.,. It appeared to Department that appellant was rendering the service of 'providing opportunity to see live matches'. The said service is not defined as taxable service under the Finance Act, 1994. The Department was of the

view that the said service is exempted services. The appellant was availing credit on input services. As the appellant was providing both dutiable and exempted service (providing opportunity to see live matches) and has availed credit on common input service, the appellant has to discharge the liability as under Rule 6(3)(i) of CENVAT Credit Rules, 2004. i.e., the appellant had to pay 6% of the value of the exempted services. i.e., from the income received from sale of tickets on the ground that by selling tickets the appellant was rendering exempted service in the nature of 'providing opportunity to see live matches'. The appellant had not maintained separate CENVAT accounts for receipt of common input service for both taxable and exempted services. The appellant was thus liable to pay service tax of Rs.68,64,759/- as per Rule 6(3)(i) of CENVAT Credit Rules, 2004.

2.11.1 Thirdly, on 19.01.2009 and 07.02.2009, the appellant was successful bidding of some contracted players including players of foreign origin. The appellant thus entered into agreements with each of the players. Schedule I of the agreement specifies the remuneration and benefits *viz,* the player fee. In addition to playing for the team, the players are required to participate in various promotional activities of appellant, its partners, including Aircel, Reebok; and BCCI-IPL of its partners like DLR, Pepsi, etc.,. In the agreement, the payment to the player was not split up as payment for playing match and payment for promotional activities. The payment made by appellant to player was composite in nature. Thus each of the player was rendering taxable service of Business Support Service to the appellant as defined under Section (104 c) of the Finance Act, 1994 read with Section 65 (105) (zzzq) of the said Act.

2.11.2 Scrutiny of the ledgers showed that the payments made to players were accounted as 'Retainer Fee'. It was seen from the contract that 14 players were of foreign origin and 20 players of India nationality. The payment made by the appellant to the players of foreign origin was taxable

under reverse charge mechanism as per Section 66A of Finance Act, 1944. The players having rendered to the appellant the various activities of promotional activities, the appellant is liable to pay Service Tax under RCM as the amount paid to the foreign players; the appellant being the receipt of service. It appeared to Department that the appellant is liable to pay Service Tax for the payment made to foreign players as these individuals were providing BSS to appellant and being import of services as under Rule 2(1)(d)(iv) of Service Tax Rules, 1994, the appellant has to pay Service Tax under reverse charge mechanism (under 66A) for the services received from these players. The appellant had not discharged the appropriate Service Tax for the import of services.

2.12 Fourthly, it was further noted that the appellant had entered into agreement with Aircel Ltd., wherein the appellant granted the sponsorship right and other rights to Aircel to sponsor the Chennai Super Kings team in accordance with the terms of the agreement, which included attire branding, man media campaign etc.,. On perusal of the rights given to Aircel Ltd., *vide* the agreements it was seen that appellant was rendering the taxable service of 'sale of space or time for advertisement service' to Aircel. As per the sponsorship agreement Aircel has to pay the stipulated amount as sponsorship fee to the appellant. In addition to the taxable service of sponsorship the appellant was also rendering taxable service of 'sale of space or time for advertisement'. The consideration was not split up and stated as sponsorship fee only. As the services were composite in nature and the essential character was not determinable, it appeared that as per Section 65A, the services as per the agreement have to be classified under the category 'sale of space or time for advertisement services'. The appellant had not discharged service tax under this category of service.

2.13 Similar agreement/arrangements were entered into with M/s. Reebok Ltd., M/s. United Spirits Ltd., M/s. Real

Value Promoters, M/s. Tulsyan Steels Ltd., etc., and an moll entered with M/s. Amalgamated Bean Coffee Trading Ltd. In the agreement entered with M/s. Reebok India company the said company was to be the apparel sponsor for Chennai Super Kings. The agreement entered with M/s. USL was that M/s. USL was to sponsor the team as official "Game for Life/Partners". The appellant did not discharge Service Tax under the category of sale of space or time for advertisement in regard to agreements entered with such companies.

2.14 Two separate Show Cause Notices dated 14.10.2010 and 20.10.2010 was issued to the appellant demanding the short paid Service Tax, wrongly availed credit. After due process of law, the adjudicating authority *vide* common order impugned herein adjudicated both the Show Cause Notices confirming the demand of tax along with interest and imposed penalties. Aggrieved by such order, the appellant is now before the Tribunal.

3. The Ld. counsel Ms. Radhika Chandrasekar appeared and argued for the appellant. It is submitted that the appellant is a manufacturer of cement and is registered under Central Excise and Service Tax and has been discharging Excise Duty and Service Tax wherever applicable. The appellant is also the owner of the Cricket Team Called "Chennai Super Kings" which is one of the IPL cricket teams under BCCI-IPL which conducts Twenty-20 Cricket Tournament every year.

4. In the year 2008, the BCCI proposed to organize a Twenty-20 Cricket Competition for popularising cricket in India and to garner additional funds for the Board to further its objectives. A sub-committee called BCCI-IPL was constituted to organize the tournament known as "Indian Premiere League" (IPL). The tournament was being organized on the franchisee model where anyone was allowed to bid for the right to organize and run teams as franchisees of BCCI-IPL on payment of the appropriate

franchise fees and subject to the terms of the Contract specified by the BCCI-IPL. The appellant also put in their bid for the franchise of the BCCI-IPL for the Chennai Region and were successful in the bid. Accordingly the appellant executed a Franchise Agreement with BCCI-IPL on 10.04.2008. The franchise agreement authorized the appellant to organize a cricket team to participate in the BCCI-IPL "Twenty-20 Tournament.". The franchise Agreement vested certain rights and responsibilities on both the parties, viz., the appellant who is franchisee and BCCI-IPL who is the franchiser. The agreement provided for the Franchiser to retain certain rights termed as the 'Central Rights' while it allowed the Franchisee to have certain other rights. The agreement also specified the terms of payment made by the franchisee to the franchiser for the franchise granted. It also had certain clauses for sharing of the income generated as a result of certain rights reserved by the BCCI-IPL and by holding the cricket matches at various centres. In terms of the agreement, the appellant franchisee was required to pay to the franchiser (BCCI-IPL) an amount of US$ 91 million for the period from 2008-2017 as the franchise fees along with applicable Service Tax. Under the agreement, the franchiser was also required to share the income generated as a result of exploiting the Central Rights with the franchisees. Accordingly the franchiser agreed to pay the franchisees (all franchisees) together 87.5% of the income earned from Central Rights, and BCCI the franchiser, shall retain the remaining 12.5%. Similarly each franchisee was required to pay 12.5% of all the incomes received from the exploitation of the franchisee rights. The agreement further stipulated that the payment of the franchise fee by the franchisee was to be made in equal instalments every year during the currency of the agreement.

The Show Cause Notice has alleged the following issues:-

a) The income received from BCCI-IPL is taxable under 'Business Support Services' as the share of central income is nothing but consideration for providing services

to BCCI-IPL involving furtherance of business / commerce.

b) The appellant is liable to pay Service Tax under 'sale of space or time for advertisement' with respect to the sponsorship agreements entered into by the appellant with companies.

c) The appellant is liable to reverse CENVAT Credit Rules 6(3) as the appellant was engaged in providing taxable as well as exempted services on the ground that the income received by sale of tickets is exempted service.

d) The appellant is liable to pay Service Tax under 'Business Support Services' on reverse charge mechanism with respect to payments made to foreign players.

5. The Ld. counsel submitted that the Department has issued the Show Cause Notice as well as confirmed the demand on mis-conception of facts and law. In regard to the demand of Service Tax under BSS in respect of share of central income received from BCCI-IPL, it is submitted by the Ld. counsel that the original authority has confirmed the demand of Service Tax on the amount received by the appellant from BCCI-IPL on a revenue sharing basis. It is alleged by the Department that the said amount is received by the appellant as a consideration for providing services to BCCI-IPL involving furtherance of business / commerce. It is submitted by the Ld. counsel that the agreement entered between BCCI-IPL and the appellant would show that there is no obligation or quid pro quo on the part of the appellant in lieu of this payment. Clause 8 of this agreement refers to the allocation of the central right income between the franchisees and BCCI-IPL. It is the same for all franchisees. From the terms of this clause itself it is clear that it is only a revenue sharing mechanism. There are no conditions specifically attached with regard to the distribution of the income and there are no conditions also qualifying this income. In other words the BCCI-IPL is unconditionally sharing the income with the franchisees

for the development of the game and for the success of the tournament. There is no mention in the agreement that the appellant has to provide a particular service for receiving this share of central rights income.

6. The Ld. counsel submitted that there are no services rendered by the appellant to BCCI-IPL which can be classified as BSS in regard to the receipt of revenue share in the nature of central right income referred in the agreement. The adjudicating authority has ignored the fundamental fact that in order to provide business support service to anyone, the recipient must be a business or commercial organisation. BCCI-IPL is not a business or commercial organisation and is registered for the promotion of sports / cricket.

7. The appellant is a franchisee of BCCI-IPL and therefore BCCI-IPL is providing the franchise service to appellant for which BCCI-IPL is discharging Service Tax. The observation made in the Order-in-Original that the appellant is supporting BCCI-IPL in their business ventures and the share of centralized income and other sum earned by appellant is a consideration for providing services to BCCI-IPL for furtherance of their business is not tenable.

8. It is submitted that the issue is squarely covered by the decision in the case of *KPH Dream Cricket Pvt. Ltd. Vs. Commissioner of Central Excise and Service Tax [2020 (34) GSTL 456]* wherein it has been held that on central rights income no Service Tax is payable as it is only a revenue sharing arrangement. The KPH Dream Cricket Pvt. Ltd. is the owner of cricket team Kings XI Punjab under BCCI-IPL whereas the appellant herein is the owner of Chennai Super Kings. In a recent decision of the Mumbai Bench of the Tribunal in the case of M*/s. Jaipur IPL Cricket Pvt. Ltd., Vs. Principle Commissioner of Service Tax, Mumbai F.O. No. A/85993-85994/2023* dated 19.06.2023, the Tribunal had an occasion to

consider the very same issue as to the demand of Service Tax on central rights income and by following the decision in the case of KPH Dream Cricket Pvt. Ltd. (*supra*) held that the demand cannot sustain.

9. Reliance was also placed on the decision in the case of Mormugao Port Trust Vs. Commissioner Central Excise and Service Tax [2017 (48) STR 69 (SC)] which is affirmed by the Hon'ble Apex Court wherein it has been held that activities undertaken by the partner / Co-venturer for mutual benefit of partnership / joint venture cannot be regarded as service rendered by one person to another for receiving consideration and therefore cannot be taxed. In the case of *Tamil Nadu Cricket Association vide F.O. No. 40058-40060/2023* dated 20.02.2023 (Chennai Tri.) it was held that the demand of Service Tax under business support services in regard to amounts received from BCCI-IPL is not sustainable. The fact that BCCI-IPL is not a business organization has already been affirmed by the Hon'ble Supreme Court in the decision of *BCCI Vs. CST [2017 (7) STR 384 (SC)]*. The Mumbai Income Tax Tribunal in the case of *Board of Control for Cricket in India Vs. Principal Commissioner of Income-tax [2020 (132) Taxmann.com 132]* has held that where all funds including additional funds generated form Indian Premier League tournament (IPL), were employed by assesse-trust (BCCI) for promoting cricket, merely because operational model of IPL was more entertaining, more economically viable, provided greater economic opportunities to all those associated with that tournament and resulted in more sponsorship and mobilized greater financial resources it could not be said to be of commercial nature.

10. On the second issue in regard to the demand of Service Tax under 'sale of space and time for advertisement' on the amount received under the sponsorship agreements entered by the appellant with various companies, the Ld. counsel submitted that the

original authority had issued the Show Cause Notice applying Section 65 A and classifying the service as 'sale of space and time for advertisement' alleging that the main activity as per the sponsorship agreement is sale of space and time for advertisement. This view taken by the Department as has been confirmed in the Order-in-Original is erroneous. The category of service and its classification has to be decided by the terms of the agreement. The agreement itself states that it is a sponsorship agreement. The category of service of 'sponsorship services' cannot be taken away from the agreement and be subject to levy of tax under a different category. It is submitted that the Tribunal in the case of *Dr. Lal Path Lab Pvt. Ltd., Vs. Commissioner of Central Excise, Ludhiana [2006 (4) STR 527]* has held that an item covered by specific entry in a tax code cannot be taken out and taxed under another entry. The said decision of the Tribunal has been affirmed by the High Court and Punjab & Haryana *[2007 (8) STR 337 (P&H)]*.

11.1 The Ld. counsel adverted to the definition of sponsorship services in terms of Section 65(105)(zzzn) of Finance Act, 1994 which reads as under:-

> *"Services 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."*

11.2 Section 65(99a) defines taxable service of sponsorship as under:

> *"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;"*

12. The Ld. counsel submitted that during the disputed period the sponsorship services for sports was excluded from the levy of Service Tax. However, with effect from

01.07.2010 the definition has been amended and it does not give exclusion in respect of sports events. The appellant thus was not liable to pay Service Tax on the sponsorship fee for the reason that prior to 01.07.2010, the sponsorship services for sports were not leviable to Service Tax. It is submitted that notices have been issued to the other franchisees of BCCI-IPL demanding Service Tax under sponsorship services with respect to the agreements entered in to for granting sponsorship rights. The Tribunal in such cases has held that the definition of sponsorship services does not include services in relation to sponsorship of sports events and IPL being a sport event is not covered under the definition of sponsorship services. The appeals filed by the Department against the decisions of the Tribunal have been dismissed by the Hon'ble Supreme Court. The following Tribunal decisions were relied by the Ld. counsel for the appellant:

- *KPH Dream Cricket Pvt. Ltd. Vs. CCE & ST (supra)*
- *Hero Motocop Ltd. Vs. CST 2013-TIOL-873-CESTAT-DEL*
- *Hero Honda Motors Ltd., DLF Ltd. Vs. CST, Delhi 2013-TIOL-871-CESTAT-DEL*

13. The Ld. counsel submitted that the Department cannot classify the consideration under sponsorship agreement under sale of space and time for advertisement and demand Service Tax under the said category.

14. Thirdly, it is alleged in the Show Cause Notice that the appellant is liable to reverse CENVAT Credit under Rule 6(3) for the reason that they are providing both taxable as well as exempted services. The Department has construed the activity of selling tickets as an exempted service. It is alleged that by sale of tickets, the appellant is "Providing Opportunity to See Live Matches". It is argued by the Ld. counsel that there is no service classified as sale of tickets and providing opportunity to see live matches. The revenue generated by selling

tickets cannot be considered as consideration received for providing any services. When there is no service at all the Department cannot consider it as an exempted service and bring into the application of Rule 6(3) of the CENVAT Credit Rules, 2004 and direct the appellant to pay 6% of the value of the income generated from selling tickets. The very same issue was considered by the Tribunal in the case of KPH Dream Cricket Pvt. Ltd. (supra) wherein it has been held that the amount received from sale of ticket for cricket tournament is not a service and therefore no Service Tax is required to be reversed in terms of Rule 6(3) (i) CENVAT Credit Rules, 2004.

15. The fourth issue is with regard to the demand of Service Tax on payments made by the appellant to foreign players alleging that there is import of services. The appellant had entered into agreements with the players to appoint them to play the matches, to fix the remuneration, to set out the obligations on the side of the player as well as the appellant. The Department has confirmed Service Tax on the fees paid to the foreign players on the ground that these players were rendering taxable service of Business Support Service to the appellant by playing the matches and also by taking part in promotional activities. The Ld. counsel submitted that as individual players, they did not do anything towards promotion of the business of the appellant. The players were engaged as professional cricketers and as employee of the franchisee (the appellant). It is submitted that these players are members of the IPL team and were under a contract with the appellant by which the remunerations were fixed and obligations were stipulated in the agreement. In other words, they were employees of the appellant for the period of the IPL Cricket tournament. Therefore they did not have the status of independent entities and they cannot deal with the appellant on a principal to principal basis. It is a fundamental requirement that for rendering business

support service, the service recipient should be an independent business entity and has to be on principal to principal relationship. From the terms of the contract with the players, it is clear that they did not meet the ingredients required to fit into the category of business support services. Even if there may be any promotional activities they were ancillary to the main activity of playing cricket. This issue is also covered by the decision of the Tribunal in the case of *KPH Dream Pvt. Ltd. (supra), Yusufkhan M Pathan and Irfankhan Pathan F.O.No. 10086 & 10087/2023 in ST/127/2012 (Ahmd. Tri.).*

16. The Ld. counsel argued on the ground of limitation also. It is submitted that the adjudicating authority failed to appreciate that the demand relating to the year 2008-2009 is time barred. The Show Cause Notice is issued on 14.10.2010 and the demand is for the period upto 31.03.2009. In normal course, the demand ought to have issued before 25.04.2010. Though, the Show Cause Notice is issued invoking the extended period under proviso to Section 73(1) of the Finance Act, 1994, the Department has not been able to produce any evidence to show that the appellant has deliberately suppressed facts with intent to evade payment of duty. All the documents, agreements, invoices and details of amounts received were accounted by the appellant and well within the knowledge of the Department. Further the issue is interpretational as there were several litigation pending before the various forums in regard to the demand of Service Tax on various categories of services in regard to IPL cricket match. The Ld. counsel prayed that the appeal may be allowed.

17. The Ld. Authorised Representative Shri R. Rajaraman supported the findings in the impugned order. In regard to the first issue of demand of Service Tax on the share of Central rights, it is submitted that the appellant has provided services to BCCI-IPL and the

amount is received as consideration for such services. In regard to the demand of Service Tax under the category of 'sale space or time for advertisement', the Ld. AR submitted that as per the sponsorship agreements, the appellant was giving facilities to the corporate companies for displaying their advertisements at the Stadium. Though, the sponsorship of sports is excluded from the purview of Service Tax, the amount received includes for services provided in the nature of sale of space or time for advertisement and hence taxable. The appellant has also provided services in the nature of facilitating the public to view the match through sale of tickets. These are exempted from Service Tax and the appellant is liable to reverse the CENVAT Credit attributable to the exempted service of sale of tickets. The appellant has made payments to foreign players and this is nothing but business support service rendered by the foreign players to the appellant whereby the business of the appellant is promoted and supported. The appellant has to pay Service Tax under reverse charge mechanism for import of said services. The Ld. AR submitted that the confirmation of demand, interest and penalty imposed are legal and proper.

18. Heard both sides.

19.1 The first issue that arises for consideration is the demand of Service Tax on the share of income received by the appellant from BCCI-IPL on Central rights. The very same issue was considered by the Tribunal in the case of KPH Dream Cricket Pvt. Ltd. (supra) as well as in the case of M/s. Jaipur IPL Cricket Pvt. Ltd. (supra). The relevant paragraph of the decision in the case of KPH is reproduced as under:-

> ***"6.*** *We have gone through the agreement and find that the agreement is in nature of revenue sharing and the said issue has been examined by this Tribunal in the case of Mormugao Port Trust (supra) wherein this Tribunal has observed as under :-*

"17. The question that arises for consideration is whether the activity undertaken by a co-venture (partner) for the furtherance of the joint venture (partnership) can be said to be a service rendered by such co-venturer (partner) to the Joint Venture (Partnership). In our view, the answer to this question has to be in the negative inasmuch as whatever the partner does for the furtherance of the business of the partnership, he does so only for advancing his own interest as he has a stake in the success of the venture. There is neither an intention to render a service to the other partners nor is there any consideration fixed as a quid pro quo for any particular service of a partner. All the resources and contribution of a partner enter into a common pool of resource required for running the joint enterprise and if such an enterprise is successful the partners become entitled to profits as a reward for the risks taken by them for investing their resources in the venture. A contractor-contractee or the principal-client relationship which is an essential element of any taxable service is absent in the relationship amongst the partners/co-venturers or between the co-venturers and joint venture. In such an arrangement of joint venture/partnership, the element of consideration i.e. the quid pro quo for services, which is a necessary ingredient of any taxable service is absent.

18. In our view, in order to render a transaction liable for service tax, the nexus between the consideration agreed and the service activity to be undertaken should be direct and clear. Unless it can be established that a specific amount has been agreed upon as a quid pro quo for undertaking any particular activity by a partner, it cannot be assumed that there was a consideration agreed upon for any specific activity so as to constitute a service. In Cricket Club of India v. Commissioner of Service Tax, reported in 2015 (40) S.T.R. 973 it was held that mere money flow from one person to another cannot be considered as a consideration for a service. The relevant observations of the Tribunal in this regard are extracted below :

"11. ...Consideration is, undoubtedly, an essential ingredient of all economic transactions and it is certainly consideration that forms the basis for computation of service tax. However, existence of consideration cannot be presumed in every money flow. ... The factual matrix of the existence of a monetary flow combined with convergence of two entities for such flow cannot be moulded by tax authorities into a taxable event without identifying the specific activity that links the provider to the recipient.

12. ... Unless the existence of provision of a service can be established, the question of taxing an attendant monetary transaction will not arise. Contributions for the discharge of liabilities or for meeting common expenses of a group of persons aggregating for identified common objectives will not meet the criteria of taxation under Finance Act, 1994 in the absence of identifiable service that benefits an identified individual or individuals who make the contribution in return for the benefit so derived.

> 13. ... Neither can monetary contribution of the individuals that is not attributable to an identifiable activity be deemed to be a consideration that is liable to be taxed merely because a "club or association" is the recipient of that contribution.
>
> 14. ... To the extent that any of these collections are directly attributable to an identified activity, such fees or charges will conform to the charging section for taxability and, to the extent that they are not so attributable, provision of a taxable service cannot be imagined or presumed. Recovery of service tax should hang on that very nail. Each category of fee or charge, therefore, needs to be examined severally to determine whether the payments are indeed recompense for a service before ascertaining whether that identified service is taxable."
>
> *19. We are accordingly of the view that activities undertaken by a partner/co-venturer for the mutual benefit of the partnership/joint venture cannot be regarded as a service rendered by one person to another for consideration and therefore cannot be taxed."*
>
> "23. We are accordingly of the view that there is no service that has been rendered by the Appellant, much less the taxable service of renting of immoveable property. The money flow to the Assessee from SWPL, under the nomenclature of Royalty, is not a consideration for rendition of any services but in fact represents the Appellant's share of revenue arising out of the Joint Venture being carried on by the Assessee and SWPL."

The said decision has been affirmed by the Hon'ble Apex Court (supra).

7. *Further in the case of Sir Ganga Ram Hospital (supra), wherein it was held that if there is Revenue sharing by the doctors wherein some part of fees retained by the hospital and some is given to the doctor, the same cannot be taxed under Business Support services. Therefore, we hold that the appellant-assessee is not providing any Business Support Service.*

8. *We also take note of the fact that BCCI is not commercial organization and only organizing game of cricket. Therefore any service rendered to BCCI-IPL is not in the nature of support of business of BCCI. Therefore, on that ground also; no service tax is payable by the appellant-assessee as held by this Tribunal in the case of Rajasthan Cricket Association (supra) wherein this Tribunal has observed as under :-*

> *7. Regarding appeal by the Revenue, we note that irrespective of the status of BCCI as a charitable organization or otherwise, we note that BCCI is sole organization incharge of game of cricket officially, in India. Managing, controlling and organizing the game of cricket, its development and other allied activities cannot be*

> *considered as business or commerce for service tax purpose. Such activities are with reference to managing a recognized sports. BCCI being the sole authority to manage the sport of cricket in India cannot be considered as involved in business or commerce with reference to activity of developing infrastructure for such sport. We do not see any infirmity in the findings recorded by the Original Authority while dropping the demand under the category of support service of business or commerce.*
>
> ***9.*** *Therefore, on central rights income, no service tax is payable by the appellant-assessee. Therefore, the demand on that ground is set aside and in Appeal No. ST/597/2012, the Commissioner has rightly dropped the demand against the appellant-assessee."*

19.2 From the above decision, it can be seen that the income received by the appellant from Central rights is nothing but revenue sharing and not consideration for services provided to BCCI-IPL. Following the decision in the case of KPH Dream Cricket Pvt. Ltd. (supra) and M/s. Jaipur IPL Cricket Pvt. Ltd. (supra), we are of the view that the demand under this head cannot sustain and requires to be set aside, which we hereby do.

20. The second issue is the demand of Service Tax under the category of sale space or time for advertisement. The appellant has entered into sponsorship agreements with various corporates. There is no liability to pay Service Tax on sponsorship of sports events till the year 2010. The period of dispute in the present appeals is prior to 01.07.2010. The very same issue was considered by the Tribunal in the case of *Hero Motocorp Ltd. Vs. CST 2013-TIOL-873-CESTAT-DEL* and in the case of *Hero Honda Motors Ltd., DLF Ltd. vs. CST, Delhi 2013-TIOL-871-CESTAT-DEL*. The relevant paragraphs read as under:-

> *"14. The adjudicating authority (though a different incumbent of the authority) passed an order which is the subject matter of Service Tax Appeal No. 1418 of 2011. The core reason recorded for disallowing the claim of the appellant herein is that while T-20 matches played under the banner of IPL are clearly sports events, BCCI/ IPL cannot be imagined to be a sporting event. The authority records that from the agreement dated 18.04.2008*

(the relevant sponsorship agreement), the assessee was appointed the official partner as set out in clause 2 thereof and franchisee rights accrue to the assessee for a consideration (sponsorship fee) paid to the BCCI/ IPL; and the terms and conditions in the sponsorship agreement clearly disclose that the assessee had made the payment to the BCCI/ IPL, not for a T-20 tournament of any cricket match but to BCCI/ IPL, which itself is not a game.

15. The above analysis of the adjudication authority, creative as it goes, defies comprehension. On a true and fair analysis of the sponsorship agreement, that the sponsorship agreement is in relation to cricket tournaments conducted under the auspicious of BCCI/ IPL; that cricket is a sport; and the tournament (league) by the nature of its process is a sporting event, is indisputable. To dissect the generic composition of the sponsorship agreement by reference to a circumstance that payments are made not to the T-20 tournament of cricket matches but to the BCCI/ IPL (which is not a game), is an extravagant and logically misconceived analysis. Surely, it is not anybodys case that the payments were made to BCCI/ IPL for the latters intrinsic brand image and not for or in relation to the tournament (T-20, which is the subject matter of the sponsorship agreement). The charging provision clearly excludes from chargeability to service tax, sponsorship in relation to sports events. The expression in relation to connotes activities associated with sports events.

16. On the analysis above we conclude that the several adjudication orders, impugned in these appeals are predicated on a raft of fundamental fallacies:

(a) that sponsorship of a sports event, which has a commercial element (the IPL events) is disentitled to the benefits of immunity to service tax, notwithstanding the clear phraseology of section 105(65)(zzzn) of the Act; and

(b) since the sponsorship is in relation to league matches conducted under the auspicious of BCCI/ IPL and payments were made to the BCCI/ IPL, the sponsorship is not in relation to sports events, but is sponsorship of BCCI / IPL.

17. Both fundamental premises of the adjudication authority are misconceived and unsustainable. The impugned adjudication orders are therefore quashed.

18. These appeals are allowed but in the circumstances without costs."

21. The third issue is the demand raised alleging that the appellant has provided exempted services in the nature of sale of tickets. The Tribunal in the case of KPH Dream Cricket Pvt. Ltd. (supra) and M/s. Jaipur IPL Cricket Pvt. Ltd. (supra) had occasion to consider the very same issue and held that sale of tickets cannot be considered as an exempted service. The demand raised on this ground was set aside. Following the same, we are of the view that the demand cannot sustain and requires to be set aside which we hereby do. The relevant paragraph of the decision in the case of M/s. Jaipur IPL Cricket Pvt. Ltd., has reproduced as under:-

> "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.2,18,58,230/-. 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.

5.6. 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.2,18,58,230/- towards common Cenvat credit reversal is not sustainable."

22. The fourth issue is with regard to the demand raised alleging that the appellant is liable to pay Service Tax under reverse charge mechanism on the payments made to foreign players. The very same issue was considered by the Tribunal in the case of KPH Dream Cricket Pvt. Ltd. (supra). The facts and issue being identical, the decision is applicable in the present case also. Following the same, we are of the view that the demand cannot sustain and requires to be set aside, which we hereby do. Relevant paragraph reads as under:-

"10. *The Revenue sought to demand service tax from the appellant-assessee for the fee paid to overseas players under the category of Business Support Service.*

11. *The case of the appellant-assessee is that they are under the obligation to raise a team of 16 players for which the appellant-assessee entered into an agreement with various players including players of foreign origin. The agreement specified that the players were engaged as professional cricketers and will be provided with player fee. The players were given a consolidated consideration for*

fulfilling all their obligations under the agreement, which included playing cricket and participating in league activities relating to promotional events. The players spent majority of their time playing cricket which is not taxable service. If a player is unable to play matches for the team, then he is entitled to retain only 10% of the player fee which shows that the consideration received by a player was essentially towards playing matches only.

12. *It is his submission that the promotional activities were ancillary to the main activity of playing cricket. Therefore, no service tax is payable. To support his contention, he relied upon the decision of Hon'ble Calcutta High Court in the case of Sourav Ganguly v. Union of India - 2016 (43) S.T.R. 482 (Cal.) and decision of this Tribunal in the case of Shri Karn Sharma v. CCE & ST - 2018 (4) TMI 111-CESTAT-Allahabad and C.E., C & CGT v. Piyush Chawla - 2018 (7) TMI 1009-CESTAT-Delhi.*

13. *We find that the main activity of the appellant-assessee is to play cricket apart from that, the appellant-assessee are engaged in the promotional activities which are ancillary to the main activity of playing cricket. In the case of Sourav Ganguly (supra), Hon'ble Calcutta High Court has observed as under :*

"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 independent 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."

14. *We further find that the issue has been examined by this Tribunal in the case of Umesh Yadav v. CCE - 2018 (2) TMI 136-CESTAT-Mumbai, wherein this Tribunal has observed as under :-*

"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 suo motu 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 department's appeal in view of the various decisions cited supra."

15. *Therefore, we hold that* ***on player's fee, no service tax is payable by the appellant-assessee*** *and in Appeal No. ST/597/2012, the Commissioner has rightly been dropped the demand of service tax on player's fee."*

23. From the foregoing, we have no hesitation to conclude that the demand, interest and penalties cannot sustain. The impugned orders are set aside; the appeals are allowed with consequential relief.

(Order pronounced in open court on 04.08.2023)

Sd/-

(M. AJIT KUMAR)
MEMBER (TECHNICAL)

Sd/-

(SULEKHA BEEVI C.S.)
MEMBER (JUDICIAL)

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