

IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION

CIVIL APPEAL NO. _____ OF 2024
(Diary No. 12044 of 2020)

COMMISSIONER OF CENTRAL
EXCISE AND SERVICE TAX LUDHIANA

Appellant(s)

VERSUS

AB MOTIONS PVT. LTD.

Respondent(s)

O R D E R

1. Delay condoned.
2. In view of order passed by the Coordinate Bench of this Court in C.A. No. 1335 of 2022 titled as "Commissioner of Service Tax Vs. Inox Leisure Ltd.", this appeal is disposed of.
3. Pending application(s), if any, stand(s) disposed of.

.....J
(B.R. GAVAI)

.....J
(SANDEEP MEHTA)

ITEM NO.57

COURT NO.3

SECTION XVII-A

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

CIVIL APPEAL Diary No(s). 12044/2020

(Arising out of impugned final judgment and order dated 03-04-2019 in AN No. 60150/2016 passed by the Customs, Excise And Service Tax Appellate Tribunal)

**COMMISSIONER OF CENTRAL
EXCISE AND SERVICE TAX LUDHIANA**

Petitioner(s)

VERSUS

AB MOTIONS PVT. LTD.

Respondent(s)

(IA No.77863/2020-CONDONATION OF DELAY IN FILING and IA No.77861/2020-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT and IA No.77860/2020-EX-PARTE STAY AND IA No. 77863/2020 - CONDONATION OF DELAY IN FILING)

Date : 17-05-2024 These matters were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE B.R. GAVAI
HON'BLE MR. JUSTICE SANDEEP MEHTA

For Petitioner(s)

Mr. K.M. Nataraj, A.S.G.
Mr. Mukesh Kumar Maroria, AOR
Ms. B. Sunita Rao, Adv.
Mr. Sharath Nambiar, Adv.
Mr. Pratyush Srivastava, Adv.
Mr. Vatsal Joshi, Adv.
Mr. Satvika Thakur, Adv.
Mr. Padmesh Mishra, Adv.

For Respondent(s)

Mr. Tarun Gulati, Sr. Adv.
Ms. Preeti Goel, Adv.
Mr. Anubhav Goel, Adv.
Mr. Siddhartha Jain, Adv.
Ms. Priyanka Dhyani, Adv.
Mr. Sunil Kumar Sharma, AOR

UPON hearing the counsel the Court made the following

O R D E R

1. Delay condoned.
2. The appeal is disposed of in terms of the signed order.
3. Pending application(s), if any, stand(s) disposed of.

(DEEPAK SINGH)
ASTT. REGISTRAR-cum-PS

(ANJU KAPOOR)
COURT MASTER (NSH)

[Signed order is placed on the file]

**CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHANDIGARH**

REGIONAL BENCH - COURT NO. I

Appeal No. ST/60150/2016- [DB]

(Arising out of Order-in-Original No. LUD-EXCUS-000-COM-019-15-16 dated 08.03.2016 passed by the Commissioner, Service Tax, Ludhiana)

AB Motions Pvt Ltd.

(Plot No. 2 & 3, The Western Mall, Ferozepur Road,
Ludhiana, Punjab)

.....Appellant

VERSUS

Commissioner of C.E. & S.T., Ludhiana

(Central Excise House, F-Block, Rishi Nagar, Ludhiana,
Punjab)

.....Respondent

APPEARANCE:

Mr. P.K. Mittal, Advocate for the Appellant

Mr. Vijay Gupta, Authorised Representative for the Respondent

CORAM: HON'BLE MR. ASHOK JINDAL, MEMBER (JUDICIAL)

HON'BLE MR. C.L. MAHAR, MEMBER (TECHNICAL)

FINAL ORDER NO. 60796/2019

DATE OF HEARING: 03.04.2019

DATE OF DECISION: 03.04.2019

PER C.L. MAHAR:

The brief facts of the matter are that the appellant is an owner of the mall namely 'The Western Mall' located at Ludhiana and also owns multiplex under the brand name of 'Wave Cinemas' in the said mall. The appellant has entered into agreements with the distributors/sub distributors such as Mukta Arts Limited, PVR Pictures Ltd, UTV Software Communications Ltd, Reliance Big Entertainment Pvt Ltd etc. for display of the films/movies at the multiplex cinema screens. The department has been of a view that the appellant is engaged in providing the service of "Business Support Service" as defined under Section 65(105)(zzzq) of the Finance Act, 1994 by way of Exhibition of the movies in their multiplexes. It has also been

contended that the amount earned by the appellant by providing the said service has not been reflected in their statutory returns filed with the department and no service tax has been paid on the same. Accordingly, a show cause notice dt. 15.04.2014 came to be issued where under it has been alleged that the appellant is providing "Business Support Service" to the various distributors of movies and therefore, the appellant has paid the service tax amounting to Rs. 3,72,02,750/- and has held that the same is recoverable under Section 73(1) of the Finance Act, 1994. The provisions pertaining to demand of interest under Section 75 as well as the provisions pertaining to penalty under Sections 77 and 78 of the Act have also been invoked in the show cause notice. The show cause notice got adjudicated vide order-in-original dt. 08.03.2016 where under the learned adjudicating authority has upheld all the charges and confirmed the service tax amounting to Rs. 3,72,02,750/- under Section 73(1) of the Finance Act, 1994. The interest and penalty provisions have also been confirmed. The adjudicating authority has classified the services under the category of "Business Support Service" as alleged in the impugned show cause notice.

2. The learned advocate appearing on behalf of the appellant has contended that they have entered into various agreements with the distributors/sub distributors for display of the films/movies at multiplex. The agreements for exhibiting the movies have been entered between the multiplex and various parties such as Mukta Arts Limited, PVR Pictures Ltd, UTV Software Communications Ltd, Reliance Big Entertainment Pvt Ltd etc. The agreements are for revenue sharing with the distributors/ sub distributors. The learned advocate has taken us through some of the agreements, which have been entered by the appellant between the distributors/ sub distributors. A sample of one of the said agreements is reproduced herein below:

AGREEMENT WITH MUKTA ARTS LTD

Schedule A:

Distributor's share @ 50% for 1st week

Distributor's share @ 42.5% for 2nd week

Distributor's share @ 37.5% for 3rd week

Distributor's share @ 30% for 4th and subsequent week/s

Terms:

- i) *That the exhibitor agrees to screen the picture at their theatre simultaneously with the circuit release in two cinemas for first week irrespective previous running programme from 09.10.2009.....*
- ii) *That the exhibitor agrees and undertakes to pay a sum of Rs.200000/- as adjustable advance on signing of this agreement and further agrees to pay the over and above share week to weeks by DD or cheque payable at Jalandhar city.*
- iii) *That is it mutually agreed between the Distributor and Exhibitor that a Bonus of 2.5% for the first two weeks will be given to the distributor if the net Box Office Collection of the above film crosses Rs.17.50 crores in all Properties owned and operated by the National Multiplex chains across India as mutually settled with UPDF and national Multiplex Chain Holders.*
- iv) *That the exhibitor agrees and undertakes to handle the print very carefully and in case of any damage done the print or its nay parts thereof he agrees to pay the full cost of the print to the distributor.*
- v) *That all other terms as per trade practice and incase of any dispute arising out of this agreement the matter shall be referred to the sole arbitration of the N.I.M.P. Association Jalandhar City or any of the Committee/sub-committee appointed by the N.I.M.P. Jalandhar city whose decision shall be fully binding upon both the parties.*

It has been the contention of the learned advocate that as per the agreement as mentioned above, both the parties have mutually agreed to work together wherein the appellant being the owner of the theatre is exhibiting the movies and the distributor being the right holder for the particular movies is providing and facilitating the screening of the movies. Under the agreement, it can be seen that

both the parties are working for mutual benefit to each other and they are not providing the service to any one whereas they are providing the service to self. The income is earned in the form of gross box office collection earned from screening of the movies. The revenue shared after deduction of various expenses as per the revenue sharing percentage decided by the appellant and the distributor as per the agreement. Thus, the learned advocate has tried to impress upon that the activity of screening of the film by the appellant is not a service to anybody and it is a service to self and therefore, this activity cannot be put service tax under the category of Business Support Service. It is further being impressed that the appellant has duly recorded the gross collection of screening of the films as income in their books of account and duly reflected the same in profit and loss accounts of the relevant period under the caption "Film Revenue". The share of the distributor as per the agreement entered into are recorded as expenditure and duly reflected as other direct expenses under the caption "Film Hire Charges". On the basis of the above details, it has been contended that the charges of suppression, mis-representation or intention to evade the duty are not present in the given facts of the case; therefore, extended time provided for demanding tax cannot be invoked. It has also been contended that actually no cash revenue ratio is being received by the appellant from the distributor in lieu of providing any business support service rather the revenue from the screening of the films is being received by them from the customers who come to watch the movie in the multiplex. The revenue received from the customers is shared between the appellant and the distributor, and therefore, there is no service to distributor in this case. Hence, it is wrong to say that the appellant is providing any service to distributors/ sub distributors. It has further been mentioned that the Circular No. 109/3/2009 dt. 23.02.2009 issued prior to Circular No. 148/17/2011-ST dt. 13.12.2011 clarified that in a revenue sharing model wherein the theatre owners and the distributors of the films shared the revenues earned from sale of cinema tickets, the contracting parties namely the appellant and the distributors were acting on a principal to principal basis and did not provide any services to each other.

Thus, the circular, therefore, categorically provides that no service tax ought to apply on such arrangements. Relevant extract of the said circular is as under:

"Other type of agreement is where the contract between the theatre owner and the distributor is on revenue sharing basis i.e. a fixed and predetermined portion i.e. percentage of revenue earned from selling the tickets goes to the theatre owner and the balance goes to the distributor. In this case, the two contracting parties act on principal to principal basis and one does not provide service to another. Hence, in such an arrangement the activities are not covered under service tax."

The learned advocate has also relied upon the judgments of this Tribunal in the cases of **Wave Infratech Pvt Ltd vs. CCE & ST, Lucknow - Final Order No. ST/A/71252/2018-CU[DB] dt. 27.06.2018** and **PVS Multiplex India Pvt Ltd vs. CCE & ST, Meerut-I - Final Order No. ST/A/71279/2017-CU[DB] dt. 29.08.2017**.

3. On the other hand, the learned A.R. reiterates the findings in the impugned order-in-order.

4. We have heard rival submissions made by both the sides and perused the records of the appeal.

5. After careful consideration of the submissions made by both the sides and on perusal of the records of the appeal, we find that the appellant has been screening various films in their multiplex on behalf of the film distributors such as Mukta Arts Limited, PVR Pictures Ltd, UTV Software Communications Ltd, Reliance Big Entertainment Pvt Ltd etc. As per the agreement entered into by the appellant and the various distributors/ sub distributors, the revenue generated from the selling of the tickets of movies was shared between the appellant and the various distributors in percentage terms as under:

Distributor's share @ 50% for 1st week

Distributor's share @ 42.5% for 2nd week

Distributor's share @ 37.5% for 3rd week

Distributor's share @ 30% for 4th and subsequent week/s

All the revenue receipts have duly been reflected in the books of accounts of the appellants. At the same time the revenue which has been paid by the appellant to the distributors/ sub distributors has been reflected and expenditure towards purchase of film rights for screening of the movies have also been reflected in the books of accounts. We further find that as per the agreement entered into between the appellant and the distributors/ sub distributors, both the parties have mutually agreed to work together, wherein the appellant being the owner of the theatre is exhibiting the movies provided by the distributors/ sub distributors. However, the copy rights of the film are retained by the distributors themselves. The appellant provides the theatre and other facilities such as arrangement of projector and other related equipments to screen the film. We find that under this arrangement, both the parties are working for mutual benefit of each other. They are not providing any service to any other party whereas they are providing services to self. We also find that revenue generated by the appellant which is shared by the appellant and the distributors is from the sale of movie tickets to the customers and from this revenue he is also making payment to the distributors in spite of the fact that copy right of exhibiting the movie has not been passed on to him. This purely reflect that a partnership between the distributor and the appellant exist to display the movie in the appellants theater. We find that in such a situation the element of service from appellant to the distributor does not exist and rather we find that it is a service to himself. We have also considered the Circular No. 148/17/2011-ST dt. 13.12.2011. Relevant extract of the said circular is as under:

| Type of Arrangement | Movie exhibited on whose account | Service tax implication |
|---|---|--|
| Principal-to-principal Basis | Movie being exhibited by the theatre owner or exhibitor on his own account i.e the copyrights are temporarily transferred | Service tax under copyright service to be provided by the distributor or sub-distributor or producer etc. as the case may be |
| | Movie being exhibited on behalf of Distributor or Sub distributor or Area Distributor or Producer etc. i.e no copyrights are temporarily transferred. | Service tax under Business Support Service/ Renting of Immovable property service, as the case may be, to be provided by the Theatre Owner or Exhibitor. |
| Arrangement under unincorporated partnership/joint collaboration basis. | Service provided by each of the person i.e the 'new entity'/theatre owner or Exhibitor/Distributor or Sub-distributor or Area Distributor or Producer etc as the case may be, is liable to Service Tax under the applicable head. | |

The above mentioned circular states that **the arrangement under unincorporated partnership or joint collaboration basis, where services provided by each of the person i.e. the new entity/theatre owner or exhibitor/distributor or sub distributor or area distributor or producer etc as the case may be, is liable to service tax under the applicable head.**

The explanation which is given by the above circular does not take into consideration the fact that a mutual agreement have been made for screening of films and the revenue which is being received by the person, who screening the movie, is from the customers and not from the distributors/ sub distributors. The distributor has also not passed on the copy right to the appellant, therefore, we feel that there is no relevance of the above circular in the present case and we find that in such an arrangement there is no service element from the appellant to the distributor or sub-distributor. We also feel that the issue is no longer res integra as it has been already decided by this Tribunal in

the case of ***PVS Multiplex India Pvt Ltd vs. CCE & ST, Meerut-I (supra)***. Relevant extract of the said judgment is as under:

"6. Having considered contentions and on perusal of the facts on record, we are satisfied that there is no dispute of fact that the appellant have been screening films in their multiplex on Revenue Sharing Basis, which is undisputed finding recorded by the Ld. Commissioner in the impugned order. Accordingly, we hold that the appellant is not liable to pay service tax for screening of films and payments to distributors in their theatre. We also take notice that the appellant have disclosed the gross amount received from sale of tickets or exhibition of films in their profit and loss account on the credit side and have shown the amounts paid to the distributors on the debit side under the head 'film software expenses'. So far the other head of service is concerned, we allow this appeal by way of remand to the Ld. Commissioner, so as to reconcile the payments made by the tenants for the period prior to 30.09.2011. The appellant is also directed to reconcile their accounts and if any amount is payable by them for the period subsequent to 30.09.2011, calculate the same and after depositing the tax, if any, intimate to the adjudicating authority. As regards the other issue regarding differential tax demanded Rs.56,114/- as different accounting method in the financial accounts (accrual basis) and ST-3 return, which was on receipt basis, we remanded to the Ld. Commissioner to reconcile and direct the appellant to provide the calculation, and to examine the same and be considered in accordance with law. Thus, the appeal is allowed in part and remanded in part as indicated hereinabove. The appellant shall be entitled to consequential benefits in accordance with law. We also take notice of the fact that the amount of Rs.22,21,130/- was deposited by the appellant under VCES Scheme, the appropriation for the same have been granted by the Ld. Commissioner in the impugned order-in-original."

The facts of the present matter are identical to the above mentioned decision, therefore, the above decision is very much applicable to the present matter also.

6. In view of the entire above discussion, we find that the activity undertaken by the appellant is not classifiable under service tax category of the 'Business Support Service' and therefore, not taxable. Accordingly, we hold that there is no merit in the impugned order-in-

original; therefore, we set the same. The appeal is accordingly allowed.

(Operative part pronounced in the open court)

(ASHOK JINDAL)
MEMEBR (JUDICIAL)

(C.L. MAHAR)
MEMBER (TECHNICAL)

RA_Saifi