

**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
EASTERN ZONAL BENCH, KOLKATA**

Service Tax Appeal No. 77110 of 2018

Arising out of Order-in-Appeal No. 292/S. Tax-II/Kol/2018, Dated: 19.04.2018
Passed by the Commissioner of CGST & Central Excise (Appeal-I), Kolkata

**Date of Hearing: 09.08.2019
Date of Decision: 09.08.2019**

**M/s CALCUTTA CLUB LTD
241, AJC BOSE ROAD, KOLKATA-700020**

Vs

**COMMISSIONER OF CGST AND CENTRAL EXCISE
KOLKATA. 180, SHANTIPALLY, RAJDANGA MAIN ROAD
3RD FLOOR, KOLKATA-700107**

Appellant Rep by: Shri Ankit Kanodia, CA

Respondent Rep by: Shri D Halder, CA (AR)

CORAM: P K Choudhary, Member (J)

Bijay Kumar, Member (T)

ST -

The assessee is engaged in providing club services and other related services and is thus registered with service tax department since the introduction of Club and Association services in the Finance Act w.e.f. 16/06/2005 by inserting the taxable service under section 65(105)(zzze) of FA, 1994 - A SCN was issued wherein it was alleged that the assessee has not paid service tax on Business Auxiliary Services, Business Support Services and Sale of Time or Space for Advertisement services for the period 2004-05 to 2006-07 and also has availed irregular Cenvat credit by willful suppression and misstatement of material fact in contravention of provision of FA, 1994 - The issue to be decided is whether the assessee club has provided any business support services to the beauty parlour service provider or not and as to whether the amounts received during the new-year eve can be equated with sale of space for advertisement services - In this regard, as regards the demand under business support services, the issue is no more res integra in the light of judgment of Tribunal in

ROYAL WESTERN INDIA TURF CLUB LTD. 2012-TIOL-1145-CESTAT-MUM -

The assessee have contended that they have not provided any space for advertisement from third parties and collected consideration but have received money in the form of sponsorship from various corporate entities wherein they in turn display their products at a defined location within the club - Hence, the consideration received cannot be connoted with sale of space or time for advertisement as that is not the service provided by assessee at all - Further, the amount collected is also not rent or any other fixed consideration - The amount is not taxable in the hands of the assessee under the alleged category of service - The impugned orders are set aside to the extent of confirmation of demand of service tax on business support services and sale of space for advertisement services and the appeal filed by the assessee is allowed with consequential benefit, including refund of tax, interest and penalty already paid by assessee on this count under protest: CESTAT

Appeal allowed

Case laws cited:

FINAL ORDER NO. A/76605/2019

Per: P K Choudhary:

The facts of the case in brief are that the appellant is engaged in providing club services and other related services and is thus registered with the service tax department since the introduction of Club and Association services in the Finance Act w.e.f. 16/06/2005 by inserting the taxable service under section 65(105)(zzze) of the Finance Act, 1994. An audit of service tax records of the Appellant for the period 2004-05 to 2006-07 was conducted by the Service tax audit team of the department which resulted in issuance of Show Cause Notice dated 02/04/2009 wherein it was alleged that the Appellant has not paid service tax on Business Auxiliary Services, Business Support Services and Sale of Time or Space for Advertisement services for the period 2004-05 to 2006-07 to the extent of Rs.5,85,283/- and also has availed irregular Cenvat credit to the tune of Rs.10,383/- by willful suppression and misstatement of material fact in contravention of the provision of the Finance Act, 1994. Upon adjudication, the Id. Adjudicating authority vide OIO dated 30/04/2010 dropped the demand to the extent of Rs.4,74,878/- on Business Auxiliary Services and confirmed the balance demand on Business Support Services, Sale of Time or Space for Advertisement Services and on irregular availment of Cenvat credit; along with interest and penalty on the confirmed amounts under section 75 and section 78 of the Finance Act, 1994. He also appropriated the amount of service tax of Rs.26,391/- along with interest of Rs.3150/- as paid by the Appellant for Business Support Services and Rs.10,383/- towards payment of Service tax on account of Cenvat Credit along with interest of Rs.310/-. The Appellant however in order to save itself from any future costs on account of the above liabilities, deposited the balance amount of demand along with interest and penalty also amounting to Rs.1,37,367/- as tax and interest of Rs.38,206/- and penalty of Rs.27,187/- under protest and then filed an appeal against the said OIO and requested for refund of the amounts already paid and appropriated. The Ld. Commissioner (Appeals), dropped the demand of Rs.10,383/- on account of irregular availment of Cenvat Credit and confirmed the balance demand to the extent of Rs.98,365/- on Business Support Service and Sale of Time or Space for Advertisement services along with interest and penalty. Thus the present appeal before the Tribunal, wherein the Appellant has also prayed for the refund of the amounts already paid in this regard in the ST 5 form filed by the Appellant.

2. The Ld. Chartered Accountant, Shri Ankit Kanodia, appearing on behalf of the appellant, submits that the confirmed demand of Rs.98,365/- is on two account- namely for provision of Sale of Time or Space for Advertisement services to the extent of Rs.71,974/- and Business Support services to the extent of Rs.26,391/-. It is his contention as regards the Sale of time or space for Advertisement Services that the amounts received represented consideration towards providing club space to commercial concerns in the club premises for advertisement during the occasion of new year's eve and any other social events of the club and hence the same cannot be classified as sale of space or time for advertisement services. Further, the Ld. CA submitted that as regards the demand under Business support services, the same has been confirmed on the ground that the Appellant is providing infrastructural support to the owner of the Beauty Parlour being run in the club premises against payment of Rs.22,000/- per month whereas the Appellant had only provided space on rent to the service provider for beauty parlour and that there is no business support service provided by the Appellant in this regard. He further stated that the amounts already paid by the Appellant including interest and penalty on the above two demands and on Cenvat credit is refundable to the Appellant. He further relied on the judgment of the Hon'ble Commissioner (Appeals-II), Kolkata in the case of

M/s. Saturday Club Limited vide Order-in-Appeal No. 214/STII/ KOL/2016-17 dated 25/11/2016

wherein on similar issue the demand was dropped and upheld by this Tribunal and department's appeal being dismissed.

3. The Ld. DR reiterated the contents of the Order and justified the same.

4. Heard both sides and perused the appeal records.

5. We find that the issue to be decided in the present case is whether the Appellant club has provided any business support services to the beauty parlour service provider or not and as to whether the amounts received during the new-year eve can be equated with sale of space for advertisement services. In this regard, as regards the demand under business support services, we find that the issue is no more res integra in the light of the judgment of the Tribunal in the case of

ROYAL WESTERN INDIA TURF CLUB LTD. Versus COMM. OF S.T., MUMBAI 2015 (38) S.T.R. 811 (Tri. - Mumbai) = [2012-TIOL-1145-CESTAT-MUM](#) wherein it was held that-

"5.8 As regards the department's claim for Service Tax under the category of 'Business Support Services' from the book makers and the caterer, the activity of the appellant was to make available space within the premises of the turf club by way of stall or canteen, for a consideration. This activity is nothing but hiring/leasing of immovable property defined under clause (zzzz) of Section 65(105) of Finance Act, 1994 which defines the service as "renting of immovable property or any other service in relation to such renting, for use in the: course of or for furtherance of business or commerce". Business support service is defined in clause (104c) of Section 65 as follows :-

"Support services of business or commerce" means services provided in relation to business or commerce and includes evaluation of prospective customers, telemarketing, processing of purchase orders and fulfillment services, information and tracking of delivery schedules, managing distribution and logistics, customer relationship management services, accounting and processing of transactions, operational or administrative assistance in any manner, formulation of customer service and pricing policies, infrastructural support services and other transaction processing.

Explanation. - for the purposes of this clause, the expression "infrastructural support services" includes providing of office space along with office utilities, lounge, reception with competent personnel to handle messages, secretarial services, internet and telecom facilities, pantry and security."

5.9 A reading of the above definition makes it very clear that mere renting of office space does not come within the definition. Such providing of space should be along with other facilities specified therein. It is not the case of the department such facilities have been provided to the book makers or the caterer. Therefore, we do not find any merit in the argument that the renting of office space to the caterer/book maker is liable to be classified as "business support service".

5.10 The C.B.E. & C. Circular [334/4/2006-TRU](#), dated 28-2-2006 makes this position very clear as under :-

"Business entities outsource a number of services for use in business or commerce. These services include transaction processing, routine administration or accountancy, customer relationship management and telemarketing. There are also business entities which provide infrastructural support such as providing instant offices along with secretarial assistance known as "Business Centre Services". It is proposed to tax all such outsourced services."

It is not the department's case that the book makers and the caterer outsourced infrastructural support from the appellant Turf Club.

a. 6. In the light of the above discussion, we do not find any merit in the impugned orders confirming Service Tax demand. Accordingly we set aside the same and allow the appeals, with consequential relief, if any."

Further as regards the demand of tax under Sale of space or time for advertisement services, we find that what is taxable under the said head of service is "taxable service to any person, by any other person, in relation to sale of space or time for advertisement, in any manner; but does not include sale of space for advertisement in print media and sale of time slots by a broadcasting agency or organisation. Explanation 1. — For the purposes of this sub-clause, "sale of space or time for advertisement" includes, —

(i) providing space or time, as the case may be, for display, advertising, showcasing of any product or service in video programmes, television programmes or motion pictures or music albums, or on billboards, public places, buildings, conveyances, cell phones, automated teller machines, internet;

(ii) selling of time slots on radio or television by a person, other than a broadcasting agency or organisation; and

(iii) aerial advertising."

6. We find that the Appellants have contended that they have not provided any space for advertisement from third parties and collected consideration but have received money in the form of sponsorship from various corporate entities wherein they in turn display their products at a defined location within the club. Hence the consideration received cannot be connoted with sale of space or time for advertisement as that is not the service provided by the Appellant at all. Further the amount collected is also not rent or any other fixed consideration. It is our considered view, that the amount is not taxable in the hands of the Appellant under the alleged category of service.

7. In view of the above, the impugned orders are set aside to the extent of confirmation of demand of service tax on business support services and sale of space for advertisement services and the appeal filed by the appellant is allowed with consequential benefit, including refund of tax, interest and penalty already paid by the Appellant on this count under protest.

(Operative portion of the order already pronounced in the Open Court)

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