Customs, Excise & Service Tax Appellate Tribunal
West Zonal Bench at Ahmedabad

REGIONAL BENCH-COURT NO. 3

Service Tax Appeal No. 12158 of 2019 - DB

(Arising out of OIA-VAD-EXCUS-001-APP-55-2019-20 dated 23/05/2019 Commissioner (Appeals) Commissioner of Central Excise, Customs and Service Tax-VADODARA-I)

Baroda Cricket Association ....**Appellant**
78, Haribhakti Extension, Race Course
Vadodara, Gujarat

VERSUS

Commissioner of C.E. & S.T.-Vadodara-I ......**Respondent**
1st Floor...Central Excise Building,
Race Course Circle,
Vadodara, Gujarat- 390007

APPEARANCE:
Shri Saurabh Dixit, Advocate for the Appellant
Shri Ajay Kumar Samota, Superintendent (AR) for the Respondent

CORAM: HON'BLE MEMBER (JUDICIAL), MR. RAMESH NAIR
HON'BLE MEMBER (TECHNICAL), MR. RAJU

Final Order No.12837/2024

DATE OF HEARING: 07.10.2024
DATE OF DECISION: 26.11.2024

RAJU

This appeal has been filed by Baroda Cricket Association against the demand of Service Tax and imposition of penalties.

2. Learned Counsel for the appellant pointed out that the appellant is a trust, engaged in the activity of promoting Cricket in and around Vadodara. For the purpose of training young players, the appellant conducts Cricket Matches in Internation Level, National Level and State Level at different places in Vadodara region. The appellant had conducted/ participated in different Inter District Tournament i.e. Ranjti Trophy, Duleep Trophy, Irani Trophy, Challenger Trophy, Vijay Hazare Trophy, etc. The appellant was receiving subsidies/assistance from BCCI from time to time. The appellant had also received certain capital equipment from BCCI. Under the mistaken belief that the capital equipment is additional subsidy/assistance from BCCI, the appellant paid service tax thereon. Later on, the BCCI informed that them the said capital received is part of the total subsidies/assistance from BCCI and not in addition to it. The appellant had also paid the service tax on "total subsidy". Later on BCCI raised debit note on the appellant. In respect of the value of the goods supplied as capital equipment. Consequently, the appellant took suo moto re-credit of the service tax paid on the capital equipment.

2.1 Learned Counsel pointed out that the issue is squarely covered by the decision of the Learned Commissioner Rajkot vide OIO No. 84/COMMR/2011 dated 26.12.2011. He pointed out that the said order has been passed holding that there is no service provider/service receiver relationship between BCCI and the cricket association. He pointed out that the said decision has been upheld by the Tribunal and appeal filed by the Revenue has been rejected as reported in 2023 (72) GSTL 93 (Tri.- Ahmd.), after following the view taken by the Tribunal Mumbai in the case of M/s. Vidarbha Cricket Association- 2015 (38) STR 99 (Tri.-Mumbai). The said decision of Tribunal was upheld by the Hon'ble Apex Court as reported in 2023 (72) GSTL 5 (SC).

2.2 Learned Counsel argued that in view of the decision of Hon'ble Apex Court no tax is leviable on amounts received from BCCI by cricket associations, towards such similar assistance/expense reimbursements etc. for participating/ hosting cricket tournaments. He argued that since there was no tax payable on receipt of the capital equipment from BCCI by the appellant there is no question of any 'short payment/ non-payment' in discharging service tax at all. Consequently, the demand should be dropped.

2.3 Learned Counsel further pointed that excess payment of service tax was adjusted by the appellant in terms of Rule 6(3) and Rule 6(4A) of the Service Tax Rules, 1994. He argued that as per the Rule (3) and Rule 6(4A), it is permissible to adjust excess paid service tax by way of refund or adjusting the tax paid as credit. He pointed out that the appellant has accordingly claimed re-credit in credit account. He relied upon on the following decisions on this regard: -

- M/s. Suzlon Energy Ltd. 2016(339) E.L.T. 87(Tri- Ahm)
- M/s. Vishal Engineers and M/s. Jani & Co. 2012(10) TMI 726- (Tri- Ahm).
- PLANTECH CONSULTANTS PVT. LTD 2016 (41) S.T.R. 850 (Tri. - Mumbai)
- GARIMA ASSOCIATES 2015 (40) S.T.R. 247 (Tri. - Mumbai)
- SCHWING STETTER (INDIA) PVT. LTD. 2016 (45) S.T.R. 101 (Tri. - Chennai)

2.4 He pointed out that CA Certificated dated 28.02.2018 clarifies the issue in detail, and the same has been ignored by the lower authorities. He pointed out that the statement of the Account Head of BCCI, being statement dated 27.04.2016 also clearly brings out the facts that BCCI had raised debit note upon the appellant towards ground equipment and therefore it never became the income of the appellant.

2.5 He further pointed out that the show cause notice dated 15.11.2017 was issued in respect of re-credit taken in January- 2015 and therefore, extended period of limitation has been invoked without any fraud, suppression or wilful misstatement, etc. on the part of the appellant.

3. Learned AR relies on the impugned order.

4. We have considered rivel submission.

4.1 We find that the facts are not in dispute. The appellant had received certain amounts from BCCI and on the same service tax liability has been discharged. The appellant had received certain equipment from BCCI and under the impression that the said equipment is in addition to the grant given by the BCCI, the appellant discharged service tax thereon. Later on, when debit note was raised by the BCCI, the appellant released that the equipment received was part of the grant and not in addition to it and consequentially corrected the situation by taking re-credit of the service tax paid on capital equipment. In support of their contention a Chartered Accountant Certificate dated 28.02.2018 was produced which observes as follows: -

> *"I have carefully examined the books of accounts, invoices raised, documents pertaining to capital equipment receipt, debit notes raised by BCCI on BCA and also sought suitable explanations from the concerned BCA representatives.*
>
> *This is to certify that BCA has been raising invoices on BCCI from time to time, and discharging appropriate Service Tax thereon. For the period from 1.7.2011 to 30.6.2017, they used to raise invoice and pay Service Tax while the remittances were received from BCCI as running payments from time to time later on.*
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> *During the period 2013-14 BCCI had sent various capital equipment to BCA worth Rs 4,14,31,625.00 (Rupees Four Crore Fourteen Lakhs Thirty One Thousand Six Hundred Twenty Five only). BCCI had also raised a debit note dated 31.3.14 (Received in February 2015) on BCA towards such equipment value, meaning thereby that BCCI treated such equipment value as a "payment" for the various amounts billed by BCA to them (on which Service Tax was already paid by BCA) from time to time, and hence, the amount due to BCA was accordingly reduced by BCCI to the extent value of Capital equipment provided by them.*

As such, there is legally no need to separately pay Service Tax on value of capital equipment by BCA, since BCCI has already credited BCA in their books of accounts as if it is a consideration paid in kind towards various other invoices raised by BCA on BCCI from time to time and on which invoices, appropriate Service Tax was always paid by BCA."

Similar facts are mentioned in the statement of the Head of Account of BCCI. In the said statement against question No. 8, 9 and 10, Shri Vidyadhar Laxman Sahasrabudhe has observed that BCCI has debited an amount of Rs. 4.14 Crore from the account of BCA maintained by them by way of issuing debit note dated 31.03.2014. Shri Vidyadhar Laxman Sahasrabudhe also submitted the relevant ledgers for 2013-14. In similar circumstances in the case of Saurashtra Cricket Association 2023 (27) GSTL 93, the tribunal had relied on the observations made by Tribunal in the case of Vidarbha Cricket Associate 2015 (38) STR 99 (Tri.- Mum.) to allow the benefit.

4.2 The Tribunal in the case of Vidarbha Cricket Associate (supra) had observe as follows: -

"5.5 *The next issue for consideration is leviability of service tax on the amounts received from BCCI by the appellant by way of subsidies. Revenue's contention is that these amounts have been paid to the appellant for infrastructural support rendered by the appellant to BCCI.*

5.5.1 *The following subsidies have been given by BCCI - 1) TV Rights subsidy; 2) BCCI tournament receipts; 3) Infrastructure subsidy; 4) BCCI IPL subsidy; 5) Players expenses reimbursements; 6) lease fees for Corporate Box; and 7) subsidy granted by BCCI. The nature of these subsidies needs examination. From the minutes of the BCCI's meetings distributing subsidies, the following picture emerges :-*

(i) As regards TV rights subsidy, BCCI receives income by selling TV rights of international matches and at the end of the financial year, the income earned by selling these rights are distributed among the affiliates and the formula for distribution is approved by the AGM . This amount has nothing to do with the organizing of any particular match by the affiliates and even associations who do not stage any match also receive subsidy from BCCI.

(ii) Tournament receipts, reimbursement of players' expenses and payment of subsidy are made when their team participates in any tournament. This amount is paid to meet the expenses of travel, lodging, daily allowance payable to the members of the team.

(iii) IPL subsidy is distributed to all affiliates out of the income generated from IPL events. Even when no IPL event is held, the affiliate gets the subsidy. For example in 2009 when IPL events were held in South Africa, each affiliate got a subsidy of Rs. 8,10,43,200/-.

5.5.2 *The object of grant of subsidy as evident from BCCI's resolution is -*

(a) to promote the game of cricket in India;

(b) to arrange, organize, control and finance the visits of Indian Cricket Team to other countries and visits of Cricket Teams of other countries to India;

(c) to build, construct, maintain and repair various stadia and other amenities;

(d) to help junior cricketers, needy cricketers, retiring cricketers, players, umpires and other persons connected with the game of cricket;

(e) creation of infrastructure.

5.5.3 *The question is whether these activities constitute Business Support services as defined in the law. As per Section 65(104c) of the Finance Act, 1994 -*

'support services for business or commerce' means services provided in relation to business or commerce and includes evaluation of prospective customers, telemarketing, processing of purchase orders and fulfilment services, information and tracking of delivery schedules, managing distribution and logistics, customer relationship management services, accounting and processing of transactions, operational assistance for marketing and processing of transactions, operational assistance for marketing, 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 office along with office utilities, lounge, reception with competent personnel to handle matches, secretarial services, internet and telecom facilities, pantry and security.

From the above definition, it is evident that the support services should be provided in relation to business or commerce. The question is whether conducting cricket tournaments and telecasting the same would constitute business or commerce.

5.5.4 *A similar issue came up for consideration before the Hon'ble Apex Court in the case of Secretary, Ministry of Information and Broadcasting v. Cricket Association of Bengal (supra) and it was held.as follows :-*

"………An organization such as BCCI or CAB in the present case which are indisputably devoted to the promotion of the game of cricket, cannot be placed in the same scale as the business organizations whose only intention is to make as large a profit as can be made by telecasting the game. Whereas it can be said that there is hardly any free speech element in the right to telecast when it is asserted by the latter, it will be warped and cussed view to take when the former claim the same right and contend that in claiming the right to telecast the cricket matches organized by them, they are asserting the right to make business out of it. The sporting organizations such as BCCI/CAB which are interested in promoting the sport or sports are under an obligation to organize the sports events and can legitimately be accused of failing in their to do so. The promotion of sports also includes its popularization through all legitimate means. For this purpose, they are duty bound to select the best means and methods to reach the maximum number of listeners and viewers. Since at present, radio or TV are the most efficacious methods, thanks to technological development, the sports organizations like BCCI/CAB will be neglecting their duty in not exploring the said media and in not employing the best means available to them to popularize the game. That while pursuing their objective of popularizing the sports by selecting the best available means of doing so, they incidentally earn some revenue, will not convert either them into commercial organizations or the right claimed by them to explore the said means, into a commercial right or interest. It must be further remembered that sporting organizations such as BCCI/CAB in the present case, have not been established only to organize sport events or to broadcast or telecast them. The organization of sporting events is only a part of their various objects, as pointed out earlier and even when they organize events, they are primarily to educate the sportsmen, to promote and popularize the sports and also to inform and entertain the viewers. The organization of such events involve huge costs. Whatever surplus is left after defraying all the expenses is ploughed back to them in the organization itself. It will be taking a deliberately distorted view of the right claimed by such organizations to telecast the sporting event to call it an assertion of their commercial right."

From the above decision of the Hon'ble Apex Court, it clearly comes out that sports organizations are not business or commercial organizations, conduct of sports or sporting events and their broadcasting/telecasting is not assertion of commercial rights. The ratio of the above judgment applies squarely to the facts of the case before us. It thus clearly emerges that, the service, if at all any, rendered by the appellant is not in relation to any business or commerce and therefore, there is no service tax liability on the said activity under Section 65(104c) read with 65(105)(zzzq) of the Finance Act, 1994.

5.5.5 *From the records, it is seen that the very same activity was examined by the Commissioner of Service Tax at Ahmedabad in the case of Gujarat Cricket Association and Saurashtra Cricket Association and by the Commissioner of Central Excise (Appeals), Pune, in the case of Maharashtra Cricket Association as to their taxability under 'event management service' and the demands were dropped vide orders dated 24-9-2007, 27-3-2009 and 28-7-2006 respectively.*

5.5.6 *In the light of the above decisions, we hold that the appellant is not liable to service tax under the category of BSS and the service tax demands made in this regard in the impugned orders are unsustainable in law and accordingly are set aside."*

The decision of Tribunal in the case of Saurashtra Cricket Association (Supra) has been upheld by the Hon'ble Apex Court as reported in 2023 (4) CenTax 128 (SC)

5. In these circumstances, we do not find any merit in the impugned order. The same is set aside. Appeal is allowed.

(Pronounced in the open court on 26.11.2024)

(RAMESH NAIR)
MEMBER (JUDICIAL)

(RAJU)
MEMBER (TECHNICAL)

Raksha