

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE  
TRIBUNAL  
BANGALORE**

REGIONAL BENCH - COURT NO. 2

**Service Tax Appeal No. 20876 of 2016**

(Arising out of Order-in-Original No. COC-EXCUS-000-COM-83/2015-16 dated 26.02.2016 passed by the Commissioner of Central Excise, Customs & Service Tax, Cochin Commissionerate, Cochin.)

**M/s. Play House Motion  
Pictures Private Limited**

Door No. 41/289, Santhi Building,  
Mahakavi Bharatiyar Road,  
Ernakulam.  
Kerala – 682 035.

Appellant(s)

*VERSUS*

**The Commissioner of Central  
Excise, Customs and Service  
Tax,**

C.R. Building,  
I.S. Press Road,  
Cochin – 682 018.

Respondent(s)

**APPEARANCE:**

Mr. M. S. Nagaraja, Advocate for the Appellant

Mr. Rajesh Shastry, Authorised Representative (AR) for the Respondent

**CORAM:**

**HON'BLE MR. P.A. AUGUSTIAN, MEMBER (JUDICIAL)  
HON'BLE MRS. R. BHAGYA DEVI, MEMBER (TECHNICAL)**

**Final Order No. 21125 / 2025**

DATE OF HEARING: 25.04.2025

DATE OF DECISION: 30.07.2025

**PER : P.A. AUGUSTIAN**

The issue in the present appeal is whether service tax can be levied on exhibition of films under the category of Business Auxiliary Service (BAS) or demand can be confirmed against

transfer or assignment of copyright of the film produced by appellant under Copyright Service.

2. The Appellant herein is engaged in the business of cinematographic film production, film distribution, etc. Appellant is also engaged in transfer or assignment of copyright of the film produced by them to various television channels, music companies...etc. Alleging that the activity carried out by the Appellant is taxable under the category of copyright or business auxiliary service and for the failure of the Appellant to pay appropriate service tax for the period from 2009-2010, 2012-2013, proceedings were initiated and a show cause notice was issued on 30.09.2014. Thereafter, Adjudication authority confirmed the demand of duty vide impugned order dated 18.02.2015. Aggrieved by said order, present appeal is filed. Accordingly, show cause notice issued for levy of service tax under copy right service effect from 01.07.2010 vide Notification No. 24/2010-ST dated 22.06.2010. The show cause notice concluded that after introduction of Negative list of services from 01.07.2012, the service tax on temporary transfer permitting the use of copyright in respect of cinematography films are fully exempted from 01.07.2012 to 31.03.2013 (subsequently available only for exhibition in Cinema Hall or Cinema theaters).

3. When the appeal came up for hearing, the Learned Counsel for the Appellant submits that the entire period is beyond the normal period of limitation and demand confirmed by invoking the extended period of limitation is prima facie unsustainable. The Learned Counsel further submits that even if it is assumed that the Appellant had failed to pay service tax as applicable in time, in the absence of any act of omission or commission on the part of the Appellant to constitute any deliberate contravention of the statutory provision, suppression of facts or intentionally evasion of service tax, invoking the extended period is unsustainable. In Appellant's case, the entire

income is properly accounted and paid due income tax on the amounts received.

4. The Learned Counsel further submits that the issue regarding service tax liability on the exhibition of film was never be free from ambiguous as evidence by the fact that the Board was compel to issue multiple instruction on the issue. Thus taxability under BAS and copyright service on exhibition of films is a matter of interpretation and more than one view is possible. Therefore the demand of service tax under the presumption that the Appellant were aware about the liability and are yet fail to discharge is contradictory to facts. In this regard the Learned Counsel relied on the following judgments:-

- i. Collector of Customs vs M/s Shimpha Drugs & Liniments (1989 (40) E.L.T 276 (SC)**
- ii. M/s Tamil Nadu Housing Board vs Collector of Central Excise (1994 (74) E.L.T 9 (SC).**
- iii. Commissioner of Central Excise vs M/s Pioneer Scientific Glass Works (2006 (197) E.L.T 308 (SC).**
- iv. M/s Cosmic Dye Chemicals vs CCE, Mumbai (1995 (75) E.L.T 721 (SC).**
- v. M/s Pushpam Pharmaceutical Company vs (1995 (78) E.L.T 401 (SC).**
- vi. Commissioner of Central Excise vs M/s Ishan Research Lab Pvt Ltd (2008 (230) E.L.T 7 (SC)**
- vii. Commissioner of Central Excise, Mangalore vs M/s Pals Microsystem (2011 (270) E.L.T 305 (SC),**
- viii. M/s Uniworth Textiles Ltd vs Commissioner of Central Excise (2013 (288) E.L.T 161 (SC).**

5. The Learned Counsel further submits that as per the Master Circular No.1053/02/2017-CX dated 10.03.2017, the Department has clarified that the extended period can be invoked only when there are ingredients necessary to justify the demand for the extended period in a case leading to short payment or non-payment of tax.

6. The Learned Counsel further submits that the demand of service tax was based on the P & L accounts, balance sheet, Form 26...etc furnished by the Appellant. Since the demand was solely determined from the records furnished by the Appellant, the extended period cannot be invoked as held by the Appellate/Hon’ble High Courts/Hon’ble Supreme Courts. The Learned Counsel relied on the following decisions in support of the same.

- i. M/s Ved Security Vs. CCE, Ranchi (2019 (6) TM-383-Cestat-Kolkat**
- ii. M/s Lord Krishna Infra Pvt. Ltd Vs. CCE (2019 (2) TMI-1563-CESTAT**
- iii. M/s Firm Foundation & Housing Pvt. Ltd Vs. Principle Commissioner in Writ Petition No. 21799/2017 the Hon’ble High Court of Madras.**

7. The Learned Counsel draw our attention to the Chart reflecting the demand covered by impugned order:-

Period	Service tax payable under different category of service		Total
	Distribution Cinematographi c film (BAS)	Temporary transfer of copyright (Copyright Service)	
2009-10	370490	NIL	370490
2010-11	227697	NIL	227697
2011-12	2243775	NIL	2243775
2012-13	1998652	4552435	6551087
Total		-	9393050

8. As regarding the demand under the category of business auxiliary service, the Learned Counsel submits that the appellant is involved in distribution of films of other producers to various theater, collect the revenue from exhibition of films from theater, transfer the collected amount to the account of the producer and receiving the commission as per the agreement entered with the producers on the total amount collected from

the theater. Alleging that said activities are falling under business auxiliary service as per Section 65 (105)(zzb) of the Finance Act, 1994 prior to 01.07.2012, demand was confirmed. In this regard, Learned Counsel drew our attention to the scope of services under Business Auxiliary Service as defined in Section 65 (19) (zzb) of the Finance Act, 1994 and submits that the definition under Section 65 (19) states that the Business Auxiliary Service' means any service in relation to and enumerates (vii) clauses thereunder. The SCN has not invoked any specific clause in the definition of "Business Auxiliary Service" in terms of Section 65 (19) (zzb) of the Finance Act, 1994 under which Cinematographic Film Distribution activity of the Appellant are liable to Service Tax. Thus in the absence of any specific clause in the show cause notice, demand of service tax under business auxiliary service is prima facie unsustainable. To support the same, the Learned Counsel relied on the following decisions:

- i) M/s Balaji Enterprises vs CC & ST, Jaipur (2020 (33) GSTL 97 (Tri. Del) (quote paragraph 25 to 29)**
- ii) Circular No. 109/3/2009-ST dated 23.02.2009 (quote paragraph 2.4 & 3, page No.22)**
- iii) M/s Inox Pleasure Ltd vs Commissioner of Hyderabad (2022 (60) GSTL 326 (Tri. Hyderabad)**
- iv) M/s Inox is upheld by Hon'ble Supreme Court (2022 (61) GSTL 342 (SC).**
- v) M/s Mothi Talkies vs Commissioner of Service Tax, Delhi (2021 (45) GSTL 168 (Tri. Del)**
- vi) Vinayakumar vs Principle Commissioner of Service Tax, Delhi (2020 (43) GSTL 384 (Tri. Del)**

9. The Learned Counsel further submits that in case of motion picture, the producer is not providing any service to any person. The Producer merely make a film and acquire copyright

over the same and transfer such right permanently or temporarily. Therefore the question of Appellant providing any service on behalf of the producer or any other person doesn't arise. As per the impugned order, it is held that the film distribution income is a commission received by the distributor for the service provided to the film producer. The amount accrued to the distributor of the film is shown in the books as income from distribution of film and not as a commission income. Thus the Adjudication authority completely misunderstood the nature of transaction between the producer of the film, the distributor and exhibition of the film by theater owners. The producer transfers the copyright to the distributor for exhibition of film in various theaters in different cities. The distributor enters into agreement with the theater owners for exhibition of the film on income sharing basis. The theater owner after deduction of his share pays the amount to distributor. The distributor retains his share as per the pre-agreed terms and in consistent with the industry norms and pays the balance share to the producer. In this regard, Learned Counsel submits that the issue regarding demand of service tax on such distribution ship agreement is settled as per the decision of this Tribunal in the matter of **M/s Balaji Enterprises Vs. Commissioner of Central Excise & ST, Jaipur (2020 (33) GSTL 97 (Tri. -Del)** where it is held that:-

" 25. In the present case, as noticed above, the show cause notice, even after reproducing the seven clauses of Section 65(19), does not specify which particular clause was attracted and it only mentions that "the assessee is an authorized distributor appointed by M/s. TTSL for selling CDMA handsets along with connection to the customers. The expenditure incurred by the distributor is reimbursed by M/s. TTSL in the guise of subsidy and the same appears to be covered under the definition of "Business Auxiliary Service" and chargeable to Service Tax since, the amount

received by the assessee was in respect of providing Business Auxiliary Service to M/s. TTSL."

"26. Thus, what has only been stated is that since the expenditure incurred by the Appellant is reimbursed by Tata Tele Services in the guise of subsidy, the same would be covered under the definition of BAS since the amount received by the Appellant would be in respect of providing BAS to Tata Tele Services".

"27. Learned Authorized Representative of the Department has, however, referred to a decision of Supreme Court in J.K. Steel Ltd. v. Union of India [1978 (2) ELT J355 (S.C.)] to contend that citing a wrong rule does not vitiate the exercise of the power, if the source of power can be traced to a rule. This decision would not come to the aid of the Department since in the present case BAS has seven ingredients and it was necessary for the Department to point out which particular category of service contained in seven clauses of BAS was attracted in the case of the Appellant".

"28. Likewise, the decision of the Supreme Court in Collector of Central Excise, Calcutta v. Pradyumna Steel Ltd. [1996 (82) ELT 441 (S.C.)] would also not come to the aid of the Department. This decision holds that mere mention of a wrong provision of law, when power that has been exercised is available under a different provision, is by itself not sufficient to invalidate the exercise of that power. 29. The impugned order, therefore, can be set aside only on this ground as the show cause notice does not mention which service out of the seven services specified in Section 65(19) of the Act was undertaken by the Appellant".

10. Learned Counsel also draw our attention to finding in the matter of **M/s. Vatsal Resources Pvt. Ltd. Vs. Commissioner of Central Excise & ST, Surat (2023 (68) GSTL 279 (Tri. Ahm.)** and the Circular No. 109/3/2009-ST dated 23.03.2009

where issue regarding service tax on movie theaters were considered and clarified that :-

"2.4 The arrangement most commonly entered into between a theatre owner and a distributor is that the theatre owner screens the movie for fixed number of days under a contract. The proceeds earned through sale of tickets go to the distributor but the theatre owner receives a fixed sum depending upon the number of days of screening. In this arrangement, the advertisement and display of posters etc. is done by the distributor. Under this arrangement, the fixed amount contracted is given to the theatre owner by the distributor irrespective of the fact whether the movie runs well or not. However, there is no rental arrangement between the theatre owner and the distributor as in the arrangement at paragraph 2.1 above. A view has been expressed that in this arrangement, the theatre owner provides 'Business Support Service' to the distributor and hence is liable to pay service tax on the fixed amount received by the theatre owner".

"2.5 The matter has been examined. By definition 'Business Support Service' is a generic service of providing 'support to the business or commerce of the service receiver. In other words the principal activity is to be undertaken by the client while assistance or support is provided by the taxable service provider. In the instant case the theatre owner screens/exhibits a movie that has been provided by the distributor. Such an exhibition is not a support or assistance activity but is an activity on its own accord. That being the case such an activity cannot fall under 'Business Support Service'".

"3. In the light of above, it is clarified that screening of a movie is not a taxable service except where the distributor leases out the theatre and the theatre owner get a fixed rent. In such case, the service provided by the theatre owner would be categorized as 'Renting of immovable

property for furtherance of business or commerce' and the theatre owner would be liable to pay tax on the rent received from the distributor. The facts of each case and the terms of contract must be examined before a view is taken."

11. The Learned Counsel also submits that the issue is also considered in the matter of **M/s Inox Leisure Ltd. Vs. Commissioner of Service Tax, Hyderabad (2022 (60) GSTL 326 (Tri.- Hyderabad)**. Though the Department filed an appeal before the Hon'ble Supreme Court, it was also dismissed (**2022 (61) GSTL 342 (SC)**). Further the issue is also considered in the matter of **M/s Moti Talkies Vs. CST, Delhi (2021 (45) GSTL 168 (Tri.- Del)** where it held that:-

"16. It is very difficult to even visualize that the appellant is providing any service to the distributor by renting of immovable property or even any other service in relation to such renting. The agreements that have been executed between the appellant and the distributors confer rights upon the appellant to screen the film for which the appellant is making payment to the distributors. The distributors are not making any payment to the appellant. Thus, no consideration flows from the distributors to the appellant for the alleged service".

12. Also considered in the matter of **Vinay Kumar Vs. Principle Commissioner of Service Tax, Delhi (2020 (43) GSTL 384 (Tri. – Del.))**. The Learned Counsel also draw our attention to the Mega Notification No. 25/2012-ST dated 20.06.2012 where at Sl No.15, temporary transfer or permitting the use of enjoyment of a copyright covered under clause A or B of sub section (1) of Section 13 of the Indian Copyright Act, 1957 (14 of 1957) relating to original literary, dramatic, musical, artistic work, cinematography..etc are exempted and considering the above, the Tribunal in the matter of **M/s Moti Talkies**

**(supra)** held that the position of law does not change with effect from 01.07.2012 because even under Section 66B of the Finance Act, service tax is levied on the value of all services other than those services specified in the Negative List.

13. As regarding demand under copy right service, Learned Counsel submits that the Appellant is a distributor of cinematic film. The Appellant had also produced one Malayalam feature film **"JAWAN OF VELLIMALA"** during 2011-2013 and certificate was issued on 17.10.2012. The Learned Counsel draw our attention to the certificate for the release issued by the Central Board of Film Certification and submits that the Appellant had entered into agreement on 01.02.2012 with Central Advertising agency, Cochin for assigning to the assignee, the exclusive telecast right, worldwide satellite television broadcast, direct home...etc for a consideration as specified in clause 3 and all other rights connected thereof with a perpetual period. Thus it is construct a permanent sale or transfer of the copyright in respect of Malayalam film and not a temporary transfer of permitting the use of enjoyment of any copyright thereof. And as per the Circular (supra), permanent transfer of intellectual right does not amount to rendering service. This regard the Learned Counsel draw our attention to Section 14, 18, 21, 22 & 26 of the Copyright Act, 1957 and submits that as per the impugned order, the Adjudication Authority held that Service tax on 'Copyright Services' was brought under the Service tax net with effect from 01.07.2010 vide notification No.24/2010-ST dated 22.06.2010. As per Section 65(105)(zzzzt) of the Finance Act 1994 taxable service means any service provided or to be provided to any person, by any other person, for-

(a) transferring temporarily; or

(b) permitting the use or enjoyment of,

any copyright defined in the Copyright Act, 1957 except the rights covered under sub-clause (a) of clause (1) of Section 13 of the said Act. As per sub clause (i) of Clause 1 of Section 67 of

the Finance Act of 1994, the value of taxable service shall be the gross amount charged by the service provider for such service provided or to be provided by him.

14. In this regard, Learned Counsel submits permanent transfer of intellectual property right does not amount to rendering of service. On such transfer, the person selling these rights no longer remains a 'holder of intellectual property right' so as to come under the purview of taxable service. Learned Counsel submits that the mode of assignment under Section 18, the assignment of copyright to any works shall identify such work and shall specify such works rights, assigned and duration and territorial extend of such assignment. In the present case, there is no agreement relied by the Adjudication authority and it is only based on the financial statement and said method adopted by the Adjudication authority is prima facie unsustainable. The Learned Counsel further submits that the service tax on intellectual property service other than copyright were introduced in the budget changes for 2004-2005 effective from 10.09.2004 and as per the Circular No. 18/10/2004-ST dated 17.09.2004, it is clarified that:-

9. Intellectual property services (other than copyrights):

9.1 Intellectual property emerges from application of intellect, which may be in the form of an invention, design, product, process, technology, book, goodwill etc. In India, legislations are made in respect of certain Intellectual Property Rights (i.e. IPRs) such as patents, copyrights, trademarks and designs. The definition of taxable service includes only such IPRs (except copyright) that are prescribed under law for the time being in force. As the phrase 'law for the time being in force' implies such laws as are applicable in India, IPRs covered under Indian law in force at present alone are chargeable to service tax and IPRs like integrated circuits or undisclosed information (not covered by Indian law) would not be covered under taxable services.

9.2. A permanent transfer of intellectual property right does not amount to rendering of service. On such transfer, the person selling these rights no longer remains a 'holder of intellectual property right' so as to come under the purview of taxable service. Thus, there would not be any service tax on permanent transfer of IPRs.

9.3 In case a transfer or use of an IPR attracts cess under Section 3 of the Research and Development Cess Act, 1986, the cess amount so paid would be deductible from the total service tax payable (refer Notification No. 17/2004-S.T.. dated 10-9-2004).

15. Learned Authorized Representative (AR) reiterated the finding in the impugned order and also draw our attention to the judgment of the Hon'ble High Court in the matter of **M/s. AGS Entertainment Private Limited Vs. UOI & Commissioner of Service Tax, Chennai W.P.No. 29398 of 2010** and further submits that issue relates to appellant collects the Income from the various Exhibitors, exhibiting him Owned Distraction rights and transfers to the Account of Producers and later the Income received from the producer stands accounted in their Balance Sheet as "Income from Distributor". Learned Authorized Representative (AR) further submits that since the case laws referred by the appellant pertains to period up to 2012 which is quite distinct from the period of service tax liability based on designate classification in terms of BAS and COPYRIGHT Services but the case law found to be delving with different category of Service i. e. 01/07/2012 onwards, any import of ratio of said quoted judgment to the impugned case, admittedly having different period and more importantly applicability of differing Category/Classification – BAS Vs. BSS, would be not legally tenable. Learned Authorized Representative (AR) also submits that after the introduction of the negative list based taxation, temporary transfer or permitting the use or enjoyment of a copyright under clause (a) or (b) of sub section (1) of Section 13

of the Indian Copyright Act 1957 relating to original literary, dramatic, musical, artistic works or cinematographic films have been exempted from the whole of Service Tax leviable thereon with effect from 01.07.2012, vide Notification No.25/2012 dated 20.06.2012. However notification No.3/2013 dated 01.04.2013, limited the exemption available to cinematographic films under copyright services to films for exhibition in cinema hall or cinema theatres. Thus after the introduction of Service tax on temporary transfer/permitting to use of copyright in respect of Cinematographic films from 01.07.2010, the full exemption to the said service was available only for the period from 01.07.2012 to 31.03.2013. Since the Appellant is receiving an income from transferring temporarily or permitting the use of the right vested in the film produced by them to their various clients, Adjudication Authority held that said activity is falling under the definition of copyright service as explained in Section 65(105)(zzzt) of Finance Act, 1994. However as per Section 18 of the Copyright Act, on assignment of copyright.

16. The Learned Authorized Representative (AR) have filed written submissions on 05.05.2025 stating that that transfer only assigning a copyright of a cinematography film undertaken by the Appellant and pursued that it is not taxable under the revenue sharing arrangements except to a distributor taken a leased theater for exhibiting the movie and theater owners get a fixed rate. Same would be tax under the head renting of immovable property. However the act of temporary transfer of permitting the use or enjoyment of copyright of cinematographic film and sound recording services are taxable under Copyright services in terms of Section 65(105)(zzzt) of Finance Act, 1994 from 01.07.2010 r/w Section 18 of Copyright Act, 1957. The Learned AR also draw our attention to the various modes of transaction in the film industry which include part financing of film, localize marketing of film, selection of exhibition halls and managing the logistics of physical print distribution.

17. Heard both sides. As regarding demand under copyright, we find that as per the agreement entered by the Appellant with Central Advertising Agency on 01.02.2012, it is an absolute assignment to the assignee or their authorized person for the telecast right and as per clause 12, the sole and exclusive right for the entire World Satellite Television Broadcast and other Broadcasting rights are connected thereof for a perpetual period. Once the agreement is for a perpetual period, as per the definition of Copyright Act and as per the Circular issued by the Board, the above said category is not falling under the category of copyright and impugned order confirming demand under copyright is unsustainable.

18. As regarding the demand under the category of business auxiliary service. Said issue is also squarely covered by the Circular No. 109/3/2009-ST dated 23.03.2009 where it is clarified that screening of a movie is not a taxable service except where the distributor leases out the theatre and the theatre owner get a fixed rent. In such case, the service provided by the theatre owner would be categorized as 'Renting of immovable property for furtherance of business or commerce' and the theatre owner would be liable to pay tax on the rent received from the distributor. There is no allegation that Appellant had entered into any agreement to leases out the theatre and the theatre owner get a fixed rent. Issue is also covered by the decision of Tribunal in the matter of **INOX Leisure Ltd. (supra)** which was upheld by the Hon'ble Supreme Court. Further as held in the matter of **M/s. Balaji Enterprise (supra)**, impugned order confirming the demand under business auxiliary service is unsustainable in the absence of any mention regarding the specific provision under which service out of the seven services specified in the Section 65 (19) of the Act, was undertaken by the appellant.

19. As regarding limitation, we find that since taxability under BAS and copyright service on exhibition of films was a matter of interpretation, Board was compel to issue multiple instruction on the issue. Therefore the demand of service tax under the presumption that the Appellant were aware about the tax liability and are yet fail to discharge is contradictory to facts. Since there is no allegation regarding willful suppression of the fact and also considering the dispute involved in similar cases, confirming demand by invoking the extended period of limitation is also unsustainable.

20. Accordingly, the impugned order is set aside.

(Order pronounced in Open Court on 30.07.2025.)

**(P.A. AUGUSTIAN)**  
**MEMBER (JUDICIAL)**

**(R. BHAGYA DEVI)**  
**MEMBER (TECHNICAL)**

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