CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
BANGALORE

REGIONAL BENCH - COURT NO. 1

Service Tax Appeal No. 25437 of 2013

(Arising out of Order-in-Original No. 43/2012 dated 08.10.2012 passed by the Commissioner of Central Excise Bangalore II Commissionerate, Bangalore.)

M/s. Karnataka State Cricket Association,
M. Chinnaswamy Stadium,
M.G. Road,
Bangalore – 560 001.

Appellant(s)

VERSUS

Commissioner of Service Tax, Bangalore North

Respondent(s)

APPEARANCE:

Mr. G. Shivadass, Senior Advocate for the Appellant

Mr. Rajiv Kumar Agarwal, Commissioner (AR) for the Respondent

CORAM: HON'BLE DR. D.M. MISRA, MEMBER (JUDICIAL)
HON'BLE MRS R BHAGYA DEVI, MEMBER (TECHNICAL)

Final Order No. 21048 /2025

DATE OF HEARING: 23.01.2025
DATE OF DECISION: 21.07.2025

DR. D.M. MISRA

This is an appeal filed against Order-in-Original No.43/2012 dated 08.10.2012 passed by the Commissioner of Central Excise, Bangalore.

2. Briefly stated the facts of the case are that the appellant is an association affiliated to the Board of Control for Cricket in India (BCCI). They are primarily established to control, help, encourage, promote and develop the game of cricket in the area

under the jurisdiction of the association. Also, they are having a club under the name of Karnataka State Cricket Association Club House which provides services to the members of the association. The appellant are registered with the Service Tax Department for providing various taxable services. On the basis of intelligence, investigation was initiated against the appellant for providing taxable services of 'sale of space or time for advertisement', renting of immovable property and also providing services of membership or club or association, without discharging appropriate service tax on the same. On completion of investigation, show-cause notice was issued on 13.10.2010 alleging that they had rendered services under the taxable category of 'sale of space or time for advertisement', renting of immovable property service and failed to discharge appropriate service tax on 'club or association service' and availed irregular cenvat credit on LED score board. Consequently, service tax amount of Rs.1,00,96,834/- not paid under the category of 'sale of space or time for advertisement service' for the period 01.04.2006 to 31.03.2010; Rs.39,08,913/- towards 'renting of immovable property service' for the period 01.06.2007 to 31.03.2010 and Rs.66,05,262/- under the category of 'membership or club or association service' for the period from 01.04.2005 to 31.03.2010 and cenvat credit of Rs.28,64,140/- availed wrongly were proposed to be recovered with interest and penalty. On adjudication, the demands were confirmed with interest and penalty.

3.1. Assailing the impugned order, the learned advocate for the appellant has submitted that the learned Commissioner has wrongly confirmed the demand under the category of club / association service. The appellants are duly registered ad constituted under the Karnataka Societies Registration Act; hence the ratio of the Hon'ble Supreme Court in the case of State of West Bengal Vs. Calcutta Club Limited [2019(29) GSTL

545 (SC)] is squarely applicable to the facts of the present case. Also, this Tribunal in the appellant's own case has set aside the order confirming the demand on account of rendering services to the members of the club.

3.2. On the confirmation of demand relating to sale of space / time for advertisement, the learned advocate has submitted that the Appellant has entered into an agreement with the M/s Sky Ads Integrated Pvt. Ltd. and M/s Artech Advertising, wherein the respective agreements stipulate that the appellant will be providing space to the aforesaid entities for display of advertisements. It is pertinent to note that the said advertising agencies further contact third party entities, whose advertisements are displayed while a match is going on. In this regard, the Appellant further submits that these agencies are the ones that become service providers with respect to the category of "sale of space/time for advertisement service". Further, he has submitted that there are conflicting views expressed by the Tribunal on the issue. The judgment of Chennai Bench of this Tribunal in the case Kasturi & Sons Vs. CGST & ST, Chennai [2019(25) GSTL 449 (Tri. Chennai)] is in their favour whereas the judgement of the Ahmedabad Bench in the case of Saurashtra Cricket Association Vs. CCE&ST, Rajkot 2020(33) GSTL 216 (Tri. Ahmd.)] held a contrary view observing that licensing of space to advertisement agencies is liable to service tax under the category of 'sale of time and space for advertisement'. He has submitted that when there are conflicting judgments on the subject, extended period of limitation cannot be invoked. In support, they referred to the judgment of the Gujarat High Court in the case of Principal Commissioner Vs. Diamond Power Infrastructure Ltd. [2016(44) STR J60(Guj.)]. Also they have submitted that where there are divergent views on the subject, extended period of limitation cannot be invoked. In support, they have referred to the

judgment of the Hon'ble Supreme Court in the case of Jaiprakash Industries Ltd. Vs. CCE, Chandigarh [2002(146) ELT 481 (SC)].

3.3. On the issue of confirmation of demand on renting of immovable property service, the learned advocate referring to the definition of 'renting of immovable property' under Section 65(105)(zzzz) of the Finance Act, 1994 has submitted that a service provided by way of renting immovable property for use in the course of or furtherance of business or commerce is a taxable service. The appellant submits that the demand by the Respondent is vague, unsubstantiated and without any basis and verification. The appellant states that the demand is raised by making summary allegations referring to financial statements, ledgers and worksheet, thus, flouting the settled law that a SCN should be specific and unambiguous. Referring to Section 65(105)(zzzz) of the Finance Act, 1994, it is submitted that a service provided by way of renting immovable property for use in the course of or furtherance of business or commerce is a taxable service. Further, Explanation 1 of the said section provides for the meaning of immovable property and also contains an exclusion clause wherein, at clause (c) it is specifically stipulated that any land used for educational, sport, circus, entertainment and parking purpose is excluded from the levy of service tax.

3.4. Further, they have submitted that the learned Commissioner has confirmed service tax liability of Rs.39,08,913/- referring to the amended provisions of renting of immovable property services observing that the appellant had rented out its premises for use in the course of or furtherance of business or commerce. The liability arose on account of legislative amendment which made the service tax leviable retrospectively; therefore, extended period of limitation cannot be invoked. In support, they referred to the judgment of the

Hon'ble Bombay High Court in the case of Commissioner Vs. National Institute of Bank Management [2015(38) STR J280 (Bom.)] which upheld the judgment of the Tribunal observing that since 'commercial training or coaching' activity became taxable and leviable due to retrospective amendment introduced by Section 76 of the Finance Act, 2010, the extended period of limitation cannot be invoked. Also, they have referred to the judgment of the Hon'ble Apex Court in the case of J.K Spinning and Weaving Mills Ltd. & Another Vs. UOI & others [1987(32) ELT 234 (SC)]. Further, they have submitted that no mala fide can be alleged when the demand is confirmed on the basis of a retrospective amendment; accordingly extended period of limitation cannot be invoked. In support, they referred to the judgment in the case of CCE, Raipur Vs. Loyd Tar Products [2016(12) STR 334 (Tri. Del.) and Sujala Pipes Pvt. Ltd. Vs. CC,CE&ST, Guntur [2015(40) STR 606 (Tri. Bang.)].

3.5. On the issue of denial of cenvat credit on LED score board availed as credit on capital goods, learned advocate has submitted that that the Respondent has held that the eligibility of the Appellant to take the first 50% of the CENVAT Credit on capital goods was available to the appellant only from 2005-2006 and not in 2004-2005 and that the appellant imported the LED scoreboard for cricketing activities and the credit in respect of the led scoreboard is utilised for discharging service tax liability. It is submitted by the appellant that the learned Commissioner has failed to appreciate that the appellant has availed credit pertaining to LED scoreboards as capital goods, in pursuance of Cenvat Credit Rules, 2004. Additionally, a perusal of the SCN indicates that the Respondent has not questioned the eligibility of the credit to the appellant, however, it has been held that even though the Appellant has initially availed the Credit and depreciation, the CVD portion was deleted from the gross block and thus, entitling the Appellant to be eligible for credit

only in 2005-06. He has further submitted that once the Appellant has been deemed to be eligible for the Credit, it indicates that the department at the first instance acknowledged the fact that there was no claim of double benefit i.e., claim of depreciation as well as claim of credit by the Appellant and thus, on a later stage the same cannot be challenged. Further, it is also submitted by the Appellant that even though the LED scoreboard is imported for cricketing activities, it is capable of being used for purposes such as display of programs, advertisement etc. In this regard, it is also stated that during the period of 2004-2005, LED scoreboard has been used for display of programmes on the screen to provide better effect and visibility to the audience and in pursuance of the above, the Appellant has discharged Service Tax under the category of "Mandap Keeper Services". Thus, this indicates that since there is a nexus between the capital goods in question i.e., the LED Scoreboard, and the output service namely the mandap keeper Service, the allegation of department is incorrect. In support of their argument that extended period cannot be invoked, they referred to the judgment in the case of C.J. Shah & Co. Vs. CCE, Rajkot [2015(38) STR 152 (Tri. Ahmd.)]

4. *Per contra*, the learned Authorised Representative (AR) for the Revenue has reiterated the findings of the learned Commissioner. He has further submitted that the learned adjudicating authority observing that the amount received are booked by the appellant under the advertisement charges and hire charges in the about said account which is in conformity with the definition of 'sale of space or time for advertisement service' confirmed the demand of service tax on the same. Also, the appellant have accepted the fact that they have collected service tax of Rs.13,76,307/- from M/s. Frontier Group (India) Pvt. Ltd. to whom they provided rights to sell and exhibit advertising of any kind. He has submitted that the issue has

been considered by the Tribunal by majority opinion in the case of Vadarbha Cricket Association Vs. CCE [2015(38) STR 99 (Tri. Mum.)] which has been later followed by the Ahmedabad Bench in the case of CCE&ST, Rajkot Vs. Saurashtra Cricket Association [2023(72) GSTL 93 (Tri. Ahmd.)]. The judgment of the Ahmedabad Bench of the Tribunal, later on appeal was upheld by Hon'ble Supreme Court reported at 2023(72) GSTL 5(SC). Further, the learned Commissioner has rightly confirmed the demand on 'renting of immovable property' since the appellant were collecting rent by providing premises to commercial establishments and the said fact was not disclosed to the Department; accordingly, extended period of limitation is invocable in this case.

5. Heard both sides and perused the records.

6. The issues involved for consideration are whether: the appellant are required to discharge (i) service tax of Rs.1,00,96,834/- for the period 01.04.2006 to 31.03.2010 under the category of 'sale of space or time for advertisement service'; (ii) service tax of Rs.39,08,913/- for the period 01.06.2007 to 31.03.2010 under the category of 'renting of immovable property service'; (iii) service tax of Rs.66,05,262/- for the period from 01.04.2005 to 31.03.2010 under the category of 'club or association service'; (iv) the appellants are eligible for cenvat credit of Rs.28,64,140/- on the LED score board and (v) extended period of limitation is invokable.

7. On the first issue, undisputed facts are that the appellant had entered into agreements with M/s. Sky Ads Integrated Pvt. Ltd., M/s. Artech Advertising and M/s. Frontier Group Pvt. Ltd. for providing space for putting up of electronic hoardings / advertisements against considerations mentioned in the respective agreements. The Department considered the said

service is taxable under the category of sale of space or time for advertisement service as defined under Section 65(105)(zzzm) of the Finance Act, 1994. The Commissioner in the impugned order observed that under the said agreements, the appellant had permitted the licensees to put up advertisement hoardings and signages within the premises of the appellant on terms and conditions as specified n the said agreements. For using this facility, the appellant was paid amounts as specified in the respective agreements. These receipts have been accounted by the appellant in their books of accounts under the income head "Instadia Advt. charges received". The appellant had accepted the service tax liability in respect of the amount received from M/s. Frontier Group (India) Pvt. Ltd. and discharged an amount of Rs.13,76,307/- as service tax towards the said taxable service. The appellant in their response to the said finding of the Commissioner has submitted that there were conflicting views; hence, extended period of limitation cannot be invoked. Also they have submitted that the Department after carrying out necessary investigation issued a show-cause notice on 20.04.2007 alleging rendering of similar service, alleged its classification under 'advertisement agency services'; therefore all these facts were within the knowledge of the Department, hence invocation of extended period of limitation in confirming the demand is not sustainable. As far as merit is concerned, we do not see any conflicting view on the subject about leviability of service tax on the sale of space or time for advertisement. The facts of both the cited cases are quite different. Besides, vide its majority opinion, this Tribunal in the case of Vidarbha Cricket Association Vs. CCE [2014(1) TMI 204 – CESTAT Mumbai] in similar facts and circumstances and rejecting similar line of argument advanced, held as follows:-

> **5.3** The next issue for consideration relates to demand of service tax under the category of 'sale of space or time for advertisement'. From the agreement

entered into by the appellant with SFIPL, it is seen that the appellant, having control of the ground for the purpose of staging the match/or extra match, has granted exclusive rights at the ground to use the advertising sites to sell and exhibit advertising of any kind, and advertising signs, during matches and extra matches and the right to erect, display, affix, maintain, renew, repair and remove or permit the erection, display, affixing, maintenance, renewal, repair or removal within two days following and the right at all times, during the matches and extra matches, to have access to and to enter or to authorize any employee, agent or sub-contractor of SFIPL to enter the ground for the purpose of exercising its right pursuant to this clause (2.1) without affecting the conduct of the match or extra match. In other words, the appellant has allowed SFIPL to use the advertising space available in the ground. Similarly the appellant has allowed TFPL to erect giant screen for advertisement purposes.

5.3.1 Section 65(105)(zzzm) defines the taxable service as :

> "(zzzm) 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 organization.
>
> *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;
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> (ii) selling of time slots on radio or television by a person, other than a broadcasting agency or organisation; and
>
> (iii) aerial advertising.
>
> *Explanation 2.* - For the purposes of this sub-clause, "print media" means, -
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> (i) "newspaper" as defined in sub-section (1) of section 1 of the Press and Registration of Books Act, 1867;
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> (ii) "book" as defined in sub-section (1) of section 1 of the Press and Registration of Books Act, 1867, but does not include business

directories, yellow pages and trade catalogues which are primarily meant for commercial purposes; "

Section 65(2) defines advertisement as follows :-

'"advertisement" includes any notice, circular label, wrapper, document, hoarding or any other audio or visual representation made by means of light, sound, smoke or gas.'

5.3.2 From the legal provisions cited above, any service *"in relation to sale of space or time for advertisement, in any manner"* will attract the levy of service tax. The sale of advertising rights to M/s. SFIPL and TFPL is in relation to advertisement and the appellant has allowed these agencies to use the space for advertisement purposes. The expressions "in relation to" and "in any manner" are wide enough to cover the activities of the appellant. It is not necessary that the person to whom the space has been sold should himself advertise. If the space provided is used for advertising, it would suffice. There is no dispute in the present case that the space provided by the appellant has been used for advertising purposes. If that be so, the appellant cannot escape the tax liability in respect of such a transaction.

5.3.3 The scope of the phrase "in relation to" was examined by the Hon'ble Apex Court in *Hrishikesh Nag Ishwar Chandra* v. *State* [AIR 1965 Tri 13 at p 14] and the Supreme Court held as follows :-

'The words "in relation to" do not mean that the offence must have been committed after the proceeding had started. Even if the offence was committed prior to the proceeding, it can be said to be in relation to the proceeding if the proceeding is undertaken in consequence of it. If the proceeding is related to an offence, the offence itself is related to the proceeding.' [Law Lexicon 2nd Edition by Venkataramaiyya]"

The sale of rights to use the space for advertising purposes is integrally connected to the use of space for advertising and therefore, the activity undertaken by the appellant is in relation to sale of space for advertisement.

> **5.3.4** The argument of the appellant that they are sub-contractors of SFIPL/TFPL and since the main contractors have discharged the service tax liability, they are not liable to service tax has no merit whatsoever. The agreement entered into between the appellant with SFIPL/TFPL shows that it is on a principal to principal basis and there is no sub-contractor relationship between the appellant and SFIPL/TFPL. Further, even if it is assumed that such a relationship exists, that does not obliterate the liability of the appellant to discharge service tax liability. Every service provider has to discharge service tax liability on the activity undertaken by him on the consideration received by him. If the recipient of the service undertakes further taxable services, he has to discharge service tax liability on the value addition made by him by taking credit of the service tax paid at the preceding stage. That is the essence of value added taxation in service tax.

The said majority opinion was later followed by the Ahmedabad Bench of this Tribunal in CCE&ST, Rajkot Vs. Saurashtra Cricket Association [2023(72) GSTL 93 (Tri. Ahmd.)], which has been upheld by the Hon'ble Supreme Court reported as 2023(72) GSTL 5 (SC). Therefore, the services rendered by the appellant by letting out space to various agencies squarely fall within the scope of taxable service of 'sale of space or time for advertisement'.

8. On the issue of applicability of extended period of limitation, the appellant had vehemently argued that the Department was well aware of the fact of rendering of said services by the appellant and after necessary investigation and conclusion of the same by recording statements, show-cause notice was issued on 20.04.2007 proposing recovery of the service tax alleging the services under the taxable category of 'advertisement agency service' and therefore, invocation of extended period of limitation is incorrect. The learned Commissioner in the impugned order has rejected the said argument of the appellant holding that the show-cause noticed dated 20.04.2007 does not specifically covered advertisement

services. We do not find merit in the said observation of the learned Commissioner after reading the show-cause notice dated 20.04.2007 enclosed with the appeal paper book. It is specifically alleged referring to an advertisement agreement entered into between the appellant and M/s. Sporting Frontiers (India) Pvt. Ltd. that the appellant are required to discharge service tax under the category of advertising agency service. In such circumstances, the demand cannot be sustained invoking extended period of limitation and be limited to normal period only.

9. On the issue of demand of service tax on 'club or association service', it is not in dispute that the appellant had allotted available rooms at its premises to their members on rental basis and the same was accounted for in their books of account. We find that the services rendered by the appellant to their members cannot be leviable to service tax under the club or association service as held by the Hon'ble Supreme Court in the case of State of West Bengal Vs. Calcutta Club Limited (supra) and followed by this Tribunal in the appellant's own case [Final Order No.20186/2025 dated 21.02.2025 in appeal No.ST/27635/2013]. Therefore, the demand confirmed on this count is liable to be set aside.

10. On the issue of recovery of service tax on 'renting of immovable property service', we find that the liability has been fastened on the appellant after the retrospective amendment by virtue of Section 76 of the Finance Act, 2010 made effective from 01.06.2007. The learned Commissioner also referring to the said retrospective amendment, has confirmed the demand for the period from 01.06.2007 to 31.03.2010. The appellant has vehemently opposed to the recovery of service tax on the basis of retrospective amendment invoking extended period of limitation. In support, they referred to the judgments in the

case of Commissioner Vs. National Institute of Bank Management (supra); J.K Spinning and Weaving Mills Ltd. & Another Vs. UOI & others (supra); CCE, Raipur Vs. Loyd Tar Products (supra) and Sujala Pipes Pvt. Ltd. Vs. CC,CE&ST, Guntur (supra). We find merit in the argument of the learned advocate for the appellant. Therefore, extended period of limitation cannot be invoked and liability, if any, be restricted to normal period only.

11. On the issue of admissibility of cenvat credit of Rs.28,64,140/- availed by the appellant on LED electronic score board installed in the stadium as capital goods during the relevant period, we find that the learned Commissioner has denied the same observing that initially the appellant had availed income tax benefit by including the value of the same in the Gross Block for the Financial Year 2004-05; however in the year 2005-06, though they have transferred / deleted the amount of Rs.28,64,140/- from the gross block taking recourse to Rule 4(4) of Cenvat Credit Rules, 2004, but held to be inadmissible. We do not find merit in the observation of the learned Commissioner inasmuch as even though the appellant initially in the Financial Year 2004-05 included the value for closing depreciation; however, later the amount of Rs.28,64,140/- was deleted giving effect that no depreciation claimed under the Income Tax Act on the cenvat credit amount availed by the appellant. Also, the learned Commissioner's finding that the said LED score board has no nexus with the taxable service provided viz. Mandap Keeper service and other services is also devoid of merit. Therefore, denial of cenvat credit on LED score board cannot be sustained.

12. Further, in the facts and circumstances of the case, since extended period of limitation cannot be invoked in demanding service tax under any of the above taxable categories,

imposition of penalty under Section 78 of the Finance Act, 2010 is not warranted.

13. In the result, the impugned order is modified by setting aside the confirmation of demand under the category of 'club or association service' and denial of cenvat credit on LED score board; regarding demand under the categories of 'sale of space or time for advertisement service' and 'renting of immovable property service', the matter is remanded to the adjudicating authority to recompute the service tax liability with interest for normal period of limitation. All penalties are set aside. Appeal is disposed of accordingly.

(Order pronounced in Open Court on 21.07.2025)

(D.M. MISRA)
MEMBER (JUDICIAL)

(R BHAGYA DEVI)
MEMBER (TECHNICAL)

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