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

REGIONAL BENCH- COURT NO.3

Service Tax Appeal No.127 of 2012

(Arising out of OIO-11/VDR-II/ST/OA/YMPATHAN/ADJ/COMMR/2011-12 dated 14/12/2011 passed by Commissioner of Central Excise, CUSTOMS (Adjudication)-VADODARA-II)

Yusufkhan M Pathan **.....Appellant**
Jumma Masjid, Gendigate Road,
Mandvi, Vadodara, Gujarat

VERSUS

C.C.E. & S.T.-Vadodara-ii **.....Respondent**
1st Floor... Room No.101,
New Central Excise Building,
Vadodara, Gujarat-390023

With

Service Tax Appeal No.128 of 2012

(Arising out of OIA-10/VDR-II/ST/OA/IRFANKHANPATHAN/ADJ/COMMR dated 14/12/2011 passed by Commissioner of Central Excise, CUSTOMS (Adjudication)-VADODARA-II)

Irfankhan Pathan **.....Appellant**
Jumma Masjid, Gendigate Road,
Mandvi, Vadodara, Gujarat

VERSUS

C.C.E. & S.T.-Vadodara-ii **.....Respondent**
1st Floor... Room No.101,
New Central Excise Building,
Vadodara, Gujarat-390023

APPEARANCE:
Shri Saurabh Dixit, Advocate for the Appellant
Shri Dinesh M. Prithiani, Assistant Commissioner (AR) for the Respondent

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

Final Order No. A/ 10086-10087 /2023

DATE OF HEARING: 20.09.2022
DATE OF DECISION: 20.01.2023

RAMESH NAIR

These appeals are filed against the Orders-In-Appeal No. 10/VDR-II/S.T./OA/IrfankhanPathan /ADJ/COMMR/2011-12 dated 14.12.2011 and 11/VDR-II/S.T./OA/Y.M.Pathan/ADJ/COMMR/2011-12 dated 14.12.2011. The

issue involved in both the appeal is same and therefore are considered together and common order is being passed.

02. Briefly the facts of the present case are that both the appellants are international cricket players and they had entered into contract with the cricket team owners (known as franchisee) whereby they were employed/ engaged to play cricket for the respective teams in terms of the contracts for IPL seasons. The fees paid to the Appellants has been held to be liable to service tax under the service category of "Business Support Service". This view has been taken on the ground that Appellant wear the team clothing which bears the brands/ marks of various sponsors and they are also required to participate in promotional /public events of the franchisee thus they are providing Business Support Service. Based on such reasoning show cause notices were issued to the appellant for demand of service tax. After considering the reply, the adjudicating authority confirmed the service tax demand alongwith interest and imposed the penalties on Appellant. Being aggrieved, an appeal was filed before the Commissioner (Appeals) who vide impugned order-in-appeal rejected the appeal of appellant and upheld the order of the adjudicating authority. Hence, the present appeals before us.

03. On behalf of the appellants, Learned Advocate Shri Saurabh Dixit appeared and argued the matter. He submits that the agreement between the Appellant and franchisee is an agreement of "employment" as can be seen from the clause 2.2 and clause 8.1(b) read with other clauses of the agreement, and the same actually creates the relationship of "employer – employee". Since, Appellant employed by the franchisee and the Appellant agreed upon the remuneration and benefit as mentioned in schedule -1 of the agreement. In addition to this, wearing the franchisee"s colour"s and design of cricket clothing, including marks and logos, it is also part of employment agreement and it cannot be construed as promotional activities.

3.1 He further submits that after referring clause 4 and 5 of the franchise agreement, Revenue authority wrongly interpreted and submitted that payment received against such contract agreement and against the promotional activities of the franchises/ sponsors by wearing franchisee"s officials cricket clothing, displaying franchisee"s sponsor"s marks/ logo etc. also were liable to pay service tax under the taxable service "Business Support Service". However in terms of agreement, stipulated wearing of

cloths as provided by the franchisee. This hardly amount to " marketing or promoting" the goods and services provided by such sponsors, whose names are mentioned on such cloths/ gear. The Appellant was obliged to undertake any "promotional activities" in terms of the agreement. After carefully reading of clause 4.1. and 4.2 of the agreement, it clear that the Appellant undertakes to grant franchisee all rights to use the identity of the appellant including his photographs. Films and TV appearances and his identification and these right is given by a player to the franchisee during the tenure of the contract and thereafter, the appellant will not claim endorsement of any products or goods or services of any sponsors in his name.

3.2 He further submits that clause 4.1. is also otherwise quite explicit inasmuch as the same clearly state that the right granted by the player to the franchisee shall not be so as to imply any individual endorsement by the player of any person, product or service and in such circumstance, player of any person, product or service and in such circumstance, player identification will normally be used with not less than two other player from the champions tournament. As such it is clear that the Appellant was not the one endorsing/promoting any person/product/ service, but it was only the franchisee who was doing so, with clear understanding that the same shall not amount to endorsement being made by the player himself. Further, reading of the entire agreement established the facts that playing cricket is the primary reason for which IPL was formed and promotional activities are ancillary to the main purpose that of playing cricket. The main activities of the Appellant, as per contact, is to play cricket as they spent 95% time for it, the other rights i.e. photography, film, television otherwise recording and performance during contract period including training and press conference granted to IPL and its franchisee are ancillary or incidental thereto, to make it commercially viable.

3.3 He argued that Appellant was in employment of the respective teams and was not an independent service provider. It is settled legal position that services provided by an employee, for the activities undertaken by the employer, for and under the instruction of the employer, cannot be termed as service provided by the employee. That by now plethora of decisions are available, wherein ad verbatim identical agreement clauses were interpreted and it was held that no service tax is leviable on player fees received for participating in IPL and the promotional events were merely incidental to the

main activity of playing as a Cricketer in IPL. He placed reliance on the following decisions:-

- SOURAV GANGULY 2016(7)TMI -237 – CALCUTTA HIGH COURT
- KPH DREAM CRICKET PVT. LTD. 2019(5)TMI 1171-CESTAT CHANDIGARH
- L.BALAJI, S. BADRINATH, DINESH KARTHICK, MURALI VIJAY, VIDYUT SIVARAMAKRISHAN, ANIRUDA SRIKKANTH, SURESH KUMAR, YO MAHESH, HEMANG BADANI, ASHWIN R.C. GANAPATHY, ARUN KARTHIK KBN, KAUSHIK GANDHI, PALANI AMARNATH C, ABHINAV MUKUND 2019(5)TMI-277-CESTAT CHNNAI
- UMESH YADAV 2018(2)TMI 135 –CESTAT MUMBAI
- PIYUESH CHAWLA 2018(7)TMI-1009-CESTAT NEW DELHI
- PIYUSH CHAWLA 2018(7)TMI 1388-CESTAT, NEW DELHI
- YOGESH TAKAWALE 2019(8)TMI 1693 –CESTAT, MUMBAI
- SHRI KARAN SHARMA 2018(4)TMI 111-CESTAT ALLAHABAD
- BHARAT CHIPLI 2022(4) TMI477- CESTAT, BANGALORE
- SHRI. SWAPNIL ASNODKAR 2018(1)TMI 266-CESTAT, MUMBAI
- SOURAB GANGULY 2020(12)TMI 534-CESTAT, KOLKATA
- SHRI ANIL KUMBLE 2022(4)TMI 305-CESTAT, BANGALORE
- MS. SHRIYA SHARAN -2014(7)TMI 78-CESTAT, NEW DELHI
- FAIZ FAZAL 2018(2)TMI -290-CESTAT, MUMBAI
- GROWEL SOFTECH LTD. 2018(11)TMI 1720-CESTA, MUMBAI
- INDIA GUNITING CORPORATION 2021(52)GSTL 174(TRI. DEL.)
- ELECTRONICS TECHNOLOGY PARKS 2022(56)GSTL 182(TRI. BANG.)

3.4 He also submits that while a more appropriate service category of "Brand Promotion Service" was introduced w.e.f 01.07.10, however, since SCNs as well as impugned orders raise demand only under Business Support Service, the contents thereof cannot be amplified and a new case cannot be made against the Appellant at this stage.

04. On other side, Shri Dinesh Prithiani, learned Assistant Commissioner (AR) for the Revenue reiterated the finding of adjudicating authority and submits that there does not exist employer employee relationship as there is no contract of employment as Appellants are a cricketer in a profession. No

proof of salary/ remuneration payment is produced in from 26AS and its tax deduction under salary head.

4.1 He also submits that the decisions as relied upon by the appellant have either been challenged in Hon"ble Apex Court or has been set aside, their appeal may be dismissed or kept pending or sine dine adjourned till disposal by Apex Court

05. Heard both sides and perused the records. After considering the submission of both the parties and on perusal of the materials of records, we find that the show cause notice was issued proposing to demand service tax under "Business Support Services and both the adjudicating authority has confirmed the demand under the said category. „Support services of business or commerce" has been defined in sub-section (104c) of Section 65 of the Finance Act to mean as follows :

> *"(104c) "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 office along with office utilities, lounge, reception with competent personnel to handle messages, secretarial services, internet and telecom facilities, pantry and security."*

5.1 The issue that arises for consideration is whether the activity carried out by the appellants would be taxable to service tax under Business support service. We find that though in the impugned order the appellants were made liable to pay service tax under the business support service but as, no specific entry as mention in above definition of "Business Support service" has been shown to be applicable to levy service tax. It is not appearing from the finding of the impugned order as how the activity of appellant covered under the above category of services. The apparel that they had to wear

was team clothing, which bears the brand/marks of various sponsors. The Appellants was not providing any service as an independent individual. In our opinion, it cannot be said that the appellants was rendering any services which could be classified as business support services. Appellants are not promoting any particular brand or product or service and also not taking part in any business activity of promoting the sale of any product or service of any entity. The entry for "Business Support Service" envisages taxing activities which are needed for doing business activities almost in the nature of outsourcing of activities connected with business. We find that the definition of "Business Support Service" does not specifically cover the activity done by Appellant.

5.2 Further, on perusal of the agreement title "Indian Premiere League Playing Contract" it clearly emerges that it is the appellant who is recognized as player first. Clause -2 of this agreement even makes it all the more clear that the franchisee is engaging players as professional cricketer who shall be employed by the franchisee. From this, it is abundantly clear that a person who has earned the reputation and recognition as a player is employed by the franchisee and it is not the other way round. The revenue while referring to clause -5 of the contract wants to impress that by virtue of the dress code, a player is obligated to his franchisee. On going through the clauses 5.2.,5.3,5.4 which prohibits commercial usage of supplied clothing. Therefore, if the same is considered as a binding condition, then its all the more strengthens the employer –employee relationship and we do not see anything wrong with employer prescribing uniform code with his employee. Further, as seen from the clause 2 and clause 8.1(b) read with other clause of the agreement , there is no doubt that appellant has been appointed/ engaged by the respective Franchisee under the agreement of „employment". The agreement create the relationship of " employer –employee". After carefully considering the facts of the case, we find that the employer – employee relationship cannot be disputed and therefore the decisions relied upon by the Learned Counsel are squarely applicable to the present case. Though there are many cases decided in respect of various cricket players of IPL teams which are on the identical facts and issue of the present case, we reproduce some of case laws as under:

- L.BALAJI, S. BADRINATH, DINESH KARTHICK, MURALI VIJAY, VIDYUT SIVARAMAKRISHAN, ANIRUDA SRIKKANTH, SURESH

KUMAR, YO MAHESH, HEMANG BADANI, ASHWIN R.C. GANAPATHY, ARUN KARTHIK KBN, KAUSHIK GANDHI, PALANI AMARNATH C, ABHINAV MUKUND 2019(5)TMI-277-CESTAT CHNNAI

7.1 The period of dispute in all the above appeals is 2008-09 to 2010-11; upto 30.06.2010 the service tax was fastened by categorizing the service under BSS whereas, for the period 01.07.2010 to 31.03.2011, the demand is raised by categorizing the same under Business Promotion Service.

7.2 The genesis of the dispute is the tripartite agreement between the Board of Control for Cricket in India (BCCI), franchisee and the assessee the terms and conditions of which are common in respect of all the players/assessees except the remuneration. On a perusal of the above tripartite agreement titled "Indian Premiere League Playing Contract" (Contract in short) it clearly emerges that it is the assessee who is recognized as a player first. There is also one another agreement between the franchisee and the assessee wherein also, an assessee is recognized as a player, clause -2 of this agreement even makes it all the more clear that the franchisee is engaging player as a professional cricketer who shall be employed by the franchisee. From this, it is abundantly clear that a person who has earned the reputation and recognition as a player is employed by the franchisee and it is not the other way round. The Revenue while referring to clause-5 of the contract wants to impress that by virtue of the dress code, a player is obligated to his franchisee. On going through the above clause, we find that the contract between the parties also provides a free hand in terms of clauses 5.2, 5.3, 5.4 and more importantly, 5.5, which prohibits commercial usage of such supplied clothing. Therefore, if the same is considered as a binding condition, then it's all the more strengthens the bondage of employer-employee relationship and we do not see anything wrong with employer prescribing uniform code with his employees. After carefully considering the facts of the case, we find that the employer- employee relationship cannot be disputed and that therefore, the decision in the case of Sourav Ganguly Vs. UOI - 2016 (43) STR 482 (Cal.) relied on by the Ld. Consultant for the assessees which decision has been followed in Shri Karan Sharma Vs. CCE & ST, Meerut-and CCE, Goa Vs. Swapnil Asnodkar (supra) is squarely applicable to the present case also.

7.3. A set of services alleged to be falling under BSS by the Revenue is also held to be covered under another set of services namely Brand Promotion Services. Admittedly, the brand promotion service was introduced w.e.f. 01.07.2010 and as observed as having been argued by the Ld. DR in paragraph-6 above of this order, cannot be made use to fit into another service ie., the categorization of the same set of activities under two different services for two different periods is not permissible. Having taxed under BSS, the Revenue should not have changed its stands for a different period when there is no change in the nature of services alleged.

7.4 On an overall analysis and in view of our findings herein above, we find that the decision of the Hon'ble Kolkata High Court in the case of Sourav Ganguly (supra) is required to be followed, there exists employer-employee relationship, the players are paid remuneration and therefore, there is no service which is liable to be brought under the tax net for both the periods under the alleged heads. In view of the above, this ground of the department appeals are liable to be dismissed, which we hereby do, he same reasons, there cannot be liability under BPS and consequently, the assessee's appeals are required to be wed and the same are allowed.

7.5 The next point urged on behalf of the assessees is that the working of the taxable value where the Revenue sought to include, for the year 2011-12, the prize money. It is not disputed by the Revenue that the prize money was not given by its franchisee, it's rather the money received from BCCI directly for winning and not towards any services. Hence, we are of the view that the prize money could never be included in the taxable value. But, however, since we are holding that there was no service at all, the above question is just academic.
8. In the result, all the assessee's appeals are allowed and all the Revenue appeals are dismissed.

9. We find that the prayer for amendment of the cause title in the miscellaneous applications filed by the Revenue needs to be amended in accordance with the change in the jurisdiction of the Revenue from CCE & ST, Chennai to the Commissioner of GST & CE, Chennai South Commissionerate, MHU Complex, 692, Anna Salai, Nandanam, Chennai-600035. Accordingly, all the miscellaneous applications for change of cause title are allowed.

- UMESH YADAV 2018(2)TMI 135 –CESTAT MUMBAI

4. Learned counsel submitted that the impugned order is not sustainable in law as the same has been passed without appreciating the facts on the law. He further submitted that the impugned order is contrary to the binding precedent on the same issue. It is his further submission that the impugned order is non-speaking and it has not considered all the submissions of the appellant and has been passed in gross violation of the principles of natural justice. He further submitted that the Commissioner (Appeals) has travelled beyond the show cause notice and has confirmed the demand of service tax under and promotion service as defined under Finance Act, 1994 whereas this was never the case of the department. The department proposed to demand service tax under business support service and the adjudicating authority has also confirmed ne demand of service tax under business support service. He also submitted that when the Commissioner (Appeals) found that the appellant has not provided business support service, then the demand of service tax has to be set aside and the learned Commissioner (Appeals) has no authority to go ahead and confirm the demand of service tax under a new taxable head which was never the case of the department. He further submitted that it is well settled that the department cannot travel

beyond the show cause notice and whatever case has been set up by the department in the show cause notice fails and therefore the demand has to be set aside. In support of these submissions, he relied upon the following decisions:-

- *Swapnil Asnodkar vs. CCE, Goa - 2018-TIOL-92-CESTAT-MUM;*
- *Warner Hindustan Ltd. vs. CCE, Hyderabad - 1999 (113) ELT 24;*
- *CCE, Goa vs. R.K. Construction - 2016 (41) STR 879;*
- *Balaji Contractor vs. CCE, Jaipur-l1-2017 (52) STR 259;*
- *Sourav Ganguly vs. UOI - 2016 (43) STR 482 (Cal.);*

Learned counsel also submitted that in fact the appellant-assessee is not providing any service to the franchisee let alone business support service or brand promotion service and the agreement between the appellant-assessee and the franchisee has been misconstrued by the department.

5. On the other hand, learned AR submitted that the department has also filed an appeal against the impugned order on the ground that the department has issued the show cause notice for classifying the service under business support service and once the show cause notice is issued, the entire proceedings has to be confined to whether these services are classifiable under business support service or not. Learned AR further submitted that the Commissioner (Appeals) cannot change the classification of service at the appellate stage and to that extent the order of the Commissioner (Appeals) is also not sustainable in law.

6. After considering the submissions of both the parties and on perusal of the material on record, we find that the show cause notice was issued proposing to demand service tax under business support service and the original authority has confirmed the demand under the said category whereas at the appellate stage, the Commissioner (appeals) has changed the classification from business support service to brand promotion service suo motu and unilaterally which is not permitted under law. Further, we find that this issue has been settled in favour of the assessee by various decisions relied upon by the appellant-assessee cited supra. Therefore, by following the ratio of the said decisions, we are of the considered opinion that the impugned order passed by the Commissioner (Appeals) going beyond the show cause notice is not sustainable in law and, therefore, we set aside the impugned order and allow the appeal of the appellant-assessee. We also find that the department is also holding the view that the appellant is not liable to tax under the category of brand promotion service. Consequently, we do not find any merit in the department's appeal in view of the various decisions cited supra.
7. Consequently, we allow the appellant-assessee's appeal and set aside the impugned order and also dismiss the appeal of the Revenue.

- PIYUESH CHAWLA 2018(7)TMI-1009-CESTAT NEW DELHI

6. It is clear that the terms and conditions of the agreement made the respondent employee of KPH. He was rather playing for KPH without having any independent entity. Whatever output/goals were achieved, were by the team as a whole and there could not be any quantification

of any work done or service provided by the respondent. He was simply a purchased member of the team working under KPH. He was in employment of KPH-IPL and was not an independent worker. It is settled legal position that services provided by an employee, for the activities undertaken by the employer, for and under the instruction of the employer, cannot be termed as service provided by the employee.

7. An identical matter titled as Sourav Ganguly v. UOI & Ors.; 2016(43) STR 482 (Cal.), has been decided by the Hon'ble Calcutta High Court in favour of cricketer. The Petitioner therein entered into an agreement with the franchisee under which he was obliged to participate in promotional activities apart from playing cricket for their franchisee and the department sought to tax the consideration received by the Petitioner from their franchisee under 'Business Support Service'. The Hon'ble High Court of Calcutta held that the Petitioner was engaged as a professional cricketer for which the franchisee was to provide fee to the petitioner. He was under full control of the franchisee and had to act in the manner instructed by the franchisee. The Hon'ble High Court further held that the Petitioner therein was not providing any service as an independent individual worker and his status was that of an employee. Therefore it cannot be said that the Petitioner was rendering any service which could be classified as Business Support Service. The relevant paragraphs of the said decision are extracted as under:-

68. "As regards the remuneration received by the petitioner for playing IPL cricket, in my opinion, the service tax demand raised on such amount under the head of Business Support Service' is also not legally tenable. Accordingly to the Department, the terms of the contract that the petitioner entered into with M/s Knight Riders Sports Pvt. Ltd. would revela that the petitioner's obligation was not limited to displaying his cricket skills in a cricket match. He also lent himself to business promotional activities. Thus he provided taxable service when he wore apparel provide by the franchisee that was embossed with commercial endorsement or when he participated in endorsement event. The Department admits that the free charged for playing the matches will fall outside THE purview of taxable service. (Emphasis Supplied)

"However, the Department contends that the petitioner has been paid composite fee for playing matches and for participating in the promotion activities but the component of promotion activities could not be segregated for charging service tax. Accordingly, service tax is chargeable on the composite amount. For this contention, the Department on the letter dated 26 July, 2010 issued by the Central Board of Excise and Customs which is also under challenge in this writ petition. In his order dated 12 November, 2012 the respondent No.3 has held that the petitioner has received substantial remuneration from IPL franchises (Knight Riders sports Pvt. Ltd.) for rendering of promotional activities to market logos/brands/marks of franchisee/sponsors. Such fees/remuneration have been paid to the petitioner by the franchisee in addition to his playing skills and thus the service rendered by the petitioner are classifiable under the taxable service head of Business Support Service' as per the provisions

of Sec. 65f (104c) read with sec. 65(105) (zzzzq) of the Finance Act, 1994. There appears to be inherent inconsistency in such decision of the respondent No.3 Sec. 65 (105) (zzzzq) pertains to brand promotion whereas Sec. 65(104c) pertains to business auxiliary services. They are two distinct and separate categories. As already indicated above, the taxable head of brand promotion was not in existence prior to 1 July, 2010, hence, reliance on that head for levying tax on the amount received by the petitioner from the IPL franchisee is misplaced and misconducted. This is sufficient to vitiate the order.

69. "Further, find from the contract entered into by the petitioner with the IPL franchisee that the petitioner was engaged as a professional cricketer for which the franchisee was to provide fee to the petitioner. The petitioner was under full control of the franchisee and had to act in the manner instructed by the franchisee. The apparel that he had to wear was team clothing and the same could not exhibit any badge, logo, mark, trade name etc. The Petitioner was not providing any service as an independence individual worker. His status was that of an employee rather than an independent worker or contractor or consultant. In my opinion, it cannot be said that the petitioner was rendering any service which could be classified as business support service. He was simply a purchased member of a team serving and performing under KKR and was not providing any service to KKR as an individual. In this regard, I fully endorse and agree with the order dated 6 June, 2014 passed by the Commissioner of Central Excise (Appeals) Delhi-Ill in Appeal No. 330- 332/SVS/RTK/2014, the facts of which case was similar to the fats of the instant case, excepting that the player concerned in that case was a member of the Chennai Super Kings." [Emphasis Supplied]

71. "In view of the aforesaid, in my view, the remuneration received by the petitioner from the IPL franchisee could not be taxed under business support service."

8. This Tribunal also in various decisions viz. Shri Karn Sharma Vs. Commissioner of Central Excise & S.T, Meerut-l Appeal No. ST/59766/2013-CU(DB) (Tri-Allahabad), Commissioner of Cus, & C. Ex., Goa vs. Swapnil Asnodkar 2018[10] G.S.T.L. 479 (Tri-Mumbai) & Umesh Yadav vs. Commissioner of Central Excise, Nagpur Appeal No. ST/85079/15 and ST/85381/15 (Tri.-Mumbai) while relying upon the decision of the Hon'ble Calcutta High Court in Sourav Ganguly's case (supra) have taken a similar view and held that the cricket player is not liable for service tax under Business Support Service.

9. In view of the above, we are also of the opinion that the remuneration received by the respondent from the franchisee M/s KPH cannot be taxed as 'Business Support Service' and therefore, the appeal filed by the department is rejected.

- SHRI KARAN SHARMA 2018(4)TMI 111-CESTAT ALLAHABAD

4. After hearing both sides, we find that Hon'ble Calcutta High Court in the case of Shri Sourav Ganguly Vs Union of India and Others reported

at 2016 (43) STR 482 (CAL) 2016-TIOL-1283-HC-KOL-ST has dealt with an identical issue better appreciation of the issue before the Hon'ble Calcutta High Court, we are reproducing para no.68 of the said order:

68. As regards the remuneration received by the petitioner for playing JPL cricket, in my opinion, the service tax demand raised on such amount under the head of 'Business Support Service', is also not legally tenable. According to the Department, the terms of the contract that the petitioner entered into with M/S. Knight Riders Sports Pvt. Ltd. would reveal that the petitioner's obligation was not limited to displaying his cricket skills in a cricket match. He also lent himself to business promotional activities. Thus, he provided taxable service when he wore apparel provided by the franchisee that was embossed with commercial endorsements or when he participated in endorsement event. The Department admits that the fee charged for playing the matches will fall outside the purview of taxable service. However, the Department contends that the petitioner has been paid composite fee for playing matches and for participating in promotional activities but the component of promotional activities could not be segregated for charging service tax. Accordingly, service tax is chargeable on the composite amount. For this contention, the Department relied on the letter dated 26 July, 2010 issued by the Central Board of Excise and Customs which is also under challenge in this writ petition.

In his order dated 12 November, 2012 the Respondent No. 3 has held that the petitioner has received substantial remuneration from IPL franchisee (Knight Riders Sports Pvt. Ltd.) for rendering of promotional activities to market logos/ brands/ marks of franchisee/ sponsors. Such fees/ remuneration have been paid to the petitioner by the franchisee in addition to his playing skills and thus the services rendered by the petitioner are classifiable under the taxable service head of Business Support Services' as per the provisions of Sec. 65(104c) read with Sec. 65(105) (zzzzq) of the Finance Act, 1994. There appears to be inherent inconsistency in such decision of the Respondent No. 3. Sec. 65(105) (zzzzq) pertains to brand promotion whereas Sec. 65(104c) pertains to business auxilary services. They are two distinct and separate categories. As already indicated above, the taxable head of brand promotion was not in existence prior to July, 2010, hence, reliance on that head for levying tax on the amount received by the petitioner from the IPL franchisee is misplaced and misconceived. This is sufficient to vitiate the order."

5. While deciding the above issue Hon'ble Calcutta High Court has held as under: -

69. Further, find from the contract entered into by the petitioner with the IPL franchisee that the petitioner was engaged as a professional cricketer for which the franchisee was to provide fee to the petitioner. The petitioner was under full control of the franchisee and had to act in the manner instructed by the franchisee. The apparel that he had to wear was team clothing and the same could not exhibit any badge, logo, mark, trade name, etc. The petitioner was not providing any service as an independent individual worker. His status was that of an

employee rather than an independent worker or contractor or consultant. In my opinion, it cannot be said that the petitioner was rendering any service which could be classified as business support service. He was simply a purchased member of a team serving and performing under KKR and was not providing any service to KKR as an individual. In this regard, fully endorse and agree with the order dated 6 June, 2014 passed by the Commissioner of Central Excise (Appeals). Delhi-ll in Appeal Nos. 330-332/ SVS/RTK/2014, the facts of which case was similar to the facts of the instant case, excepting that the player concerned in that case was a member of the Chennai Super Kings.

6. As seen from the above decision Hon'ble Calcutta High Court has held that no service was provided by the player, nor requiring him to discharge any service tax.

7. Accordingly, by following the said decision of Hon'ble Calcutta High Court we set aside the impugned order and allow the appeal with consequential relief to the appellant.

5.3 In view of above judgments and our observation, we are of the view that the Appellants are not liable to service tax under the "Business Support Service".

06. In view of the above discussion, we hold that the demands of service tax are not sustainable against the appellants. Therefore, the demands confirmed by way of impugned order are set aside. In the result, the appeals filed by the appellants are allowed with consequential relief, if any, as per law.

(Pronounced in the open court on 20.01.2023)

(RAMESH NAIR)
MEMBER (JUDICIAL)

(RAJU)
MEMBER (TECHNICAL)

Mehul