CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI.

PRINCIPAL BENCH,
COURT NO. II

SERVICE TAX EARLY HEARING APPLICATION NO. 50498 OF 2021
(ON BEHALF OF THE APPELLANT)
IN
SERVICE TAX APPEAL NO. 51920 OF 2018

[Arising out of the Order-in-Original No. 29/pp/COMMR./CGST/AUDIT-II/2017-18 dated 09/04/2018 passed by The Commissioner of Central Goods & Service Tax, Audit – II, New Delhi –110 020.]

M/s All India Football Federation, **...Appellant**
Football House, Sector – 19, Phase – I, Dwarka,
New Delhi – 110 075.

Versus

Commissioner of Central Goods and Service Tax, Audit – II, **...Respondent**
1st Floor, EIL Annexe Building,
Bhikaji Cama Palace, R.K. Puram,
New Delhi – 110 066

APPEARANCE:

Shri N.K. Gupta, Advocate for the appellant.
Dr. Radhe Tallo, Authorized Representative for the Department

CORAM:
HON'BLE MR. ANIL CHOUDHARY, MEMBER (JUDICIAL)
HON'BLE MR. P.V. SUBBA RAO, MEMBER (TECHNICAL)

FINAL ORDER NO. 51175 /2022

DATE OF HEARING : 09.06.2022
DATE OF DECISION: 09.12.2022

P.V. SUBBA RAO

This appeal is filed by M/s All India Football Federation[1] assailing order-in-original dated 09.04.2018 passed by the Commissioner of Central Board and Service Tax, Audit – II.

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[1] **appellant**

2. The facts of the case, in brief, are that the appellant is registered with the Service Tax Department and is the governing body for football matches and competitions in the country. The appellant is the owner and controller of the rights relating to national teams' competitions and matches including, but not limited to the advertising rights, broadcast rights, film rights etc. An audit was conducted of the records of M/s Zee Entertainment Enterprises Pvt. Ltd.[2] during which it was found that a tripartite agreement was entered into between the appellant, ZEEL and M/s IMG Reliance Pvt. Ltd.[3] It was found that the appellant had, as per an agreement with ZEEL granted commercial rights for broadcasting for a period of 10 years by an agreement dated 26.09.2005. This agreement was to expire on 30.09.2015 subject to any extensions or renewals.

3. Five years after the agreement was signed a tripartite agreement was signed between the appellant, ZEEL and IMGR on 09.12.2010 by which commercial rights which were granted to ZEEL were transferred to IMGR. In consideration of this transfer, IMGR paid to ZEEL a termination fee of Rs. 70 crores on behalf of the appellant. The relevant clause of this agreement is as below:-

> "As a consideration for the termination of the MRA (Master Rights Agreement), IMGR on behalf of AIFF shall pay to ZEEL" Termination Fee" of Rs. 70,00,00,000/- (Rupees Seventy Crores only), which shall be paid by IMGR to ZEEL after deducting TDS as applicable as per the Income Tax Act, 1961. The payment of Termination Fee, net of TDS shall be made in the form of a demand draft in favour of ZEEL. Simultaneously ZEEL will pay the sum of Rs. 5,37,44,005/- less TDS as applicable, in a form of TDS.

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[2] **ZEEL**
[3] **IMGR**

> The Service provided by the AIFF to ZEEL and subsequently AIFF to IMRG falls under the category of 'Use or Exploitation of Any Event Service'. This service was introduced vide Notification No. 24/2010-ST dated 22.06.2010 w.e.f. 01.07.2010".

4. It appeared to Revenue that the aforesaid amount paid by IMGR to ZEEL on behalf of the appellant is exigible to service tax at the hands of the appellant under the category of "granting rights or permitting commercial use or exploitation of any event including an event relating to art, entertainment, business, sports or marriage" under section 65 (105) (zzzzr) of the Finance Act, 1994. Accordingly, a show cause notice dated 12.04.2016 was issued to the appellant calling upon it to explain why service tax amounting to Rs. 7,53,74,401/- (including cess) should not be demanded from it under section 73 invoking extending period of limitation along with interest under section 75. Penalties were also proposed to be imposed upon the appellant. After following due process, the impugned order was passed by the Commissioner. The operative part of it is as follows.

> "(i) I confirm the Service Tax demand of Rs. 7,76,35,633/- (Rs. Seven crore Seventy Six Lac Thirty Five Thousand Six Hundred Thirty Three only) including Education Cess and Secondary & Higher Education Cess under proviso to sub-section (1) of section 73 of the Act ibid read with Rule 6 of Service Tax Rules, 1994 ;
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> (ii) I confirm demand of interest under section 75 of the Finance Act, 1994 on the above service tax liability at the applicable rate till the date of payment ;
>
> (iii) I impose a penalty equivalent to the amount of service tax not paid by them i.e. Rs. 7,76,35,633/- under section 78 of the Finance Act, 1994. However, the benefit of reduced penalty of 25% will be available to the Noticee in terms of provisions of section 78 as amended by the Finance Act, 2015;

(iv) I do not impose any penalty under section 76 of the Finance Act, 1994 ;

(v) I impose penalty totaling to Rs. 10,000/- under section 77 (2) for the violations of the Finance Act, 1994 as detailed above".

5. The appellant's submissions before the Commissioner and also before us are as follows:

(i) The show cause notice is time-barred as the extended period of limitation cannot be invoked in this case as they have been filing all their ST-3 returns as required ;

(ii) Service tax, if any, payable on the termination fee paid to ZEEL by IMGR is not the liability of the appellant as it has not received any payment ;

(iii) The termination fee paid prior to July 01, 2012 is in any case not leviable to service tax because before the negative list regime was introduced service tax could be charged only on specified services and this case is not covered under section 65 (105) (zzzzr).

6. The appellant also contested the imposition of penalties. The Commissioner did not agree with the contentions of the appellant. On the question of extended period of limitation, the Commissioner observed that the appellant has not declared the amount received as termination fee in its ST-3 returns and held that even if the appellant had considered the amount as non-taxable, the amount could have been shown as non-taxable in the ST-3 returns. This has come to light only when the records of

ZEEL were audited. Therefore, extended period of limitation was correctly invoked.

7. On merits, Commissioner held that ZEEL had been granted commercial rights which subsisted till the agreement was terminated by the tripartite agreement. He found no reason for payment of any amount to ZEEL as termination fee except because the rights have been surrendered by the ZEEL. Consideration for such surrender in the form of termination fee was also received by ZEEL. Accordingly, this amount is not a termination fee at the hands of the appellant. Since there is no other transaction than the two transactions namely, termination fee and grant of rights, the necessary implication is that the amount was paid for grant of rights by the appellant to IMGR.

8. He further held that although the amount was not received by the appellant directly, it was paid on the appellant's behalf to ZEEL by IMGR through the tripartite agreement. He also did not agree with the contention of the appellant during personal hearing that if the rights were taxable at the time of agreement with ZEEL, they would have paid the service tax and in such a situation they would have issued a credit note to ZEEL to the extent of services not provided.

9. We have heard learned Counsel for the appellant and learned Authorized Representative for the Department and perused the records. An early hearing application has been filed by the appellant to hear the appeal out of turn. As the appeal is

being decided, the early hearing application is allowed accordingly.

10. The short point to be decided as whether in the factual matrix of this case, the amount paid by IMGR to ZEEL as termination fee as per tripartite agreement entered into between the appellant, ZEEL and IMGR can be taxed and if such tax has to be paid by the appellant under the category of "permitting commercial use or exploitation of any event service" under section 65 (105) (zzzzr).

11. In order to decide this question, we need to determine if any service has been rendered by the appellant to IMGR and whether any consideration has been received for such service. The case of the Revenue is that the rights originally granted to M/s ZEEL were effectively returned to the appellant through the tripartite agreement and were transferred to IMGR. However, instead of the appellant returning an amount to ZEEL and collecting an amount from IMGR, the amount was transferred directly from IMGR to ZEEL through the tripartite agreement as "termination fee" which was paid on behalf of the appellant. Therefore, according to the Revenue, effectively the amount was paid as a consideration for the commercial rights which IMGR received from the appellant through the tripartite agreement.

12. On the other hand, according to the appellant it has not received any amount whatsoever from IMGR. The tripartite

agreement only to enabled transfer of rights from ZEEL to IMGR. These rights were originally given by the appellant to ZEEL at which time they were not taxable. ZEEL could not have sold or transferred these rights to IMGR on its own without the concurrence of the appellant therefore a tripartite agreement was entered into.

13. It is also the case of the appellant that the termination fee is anyway in the form of liquidated damage and not a consideration of service and cannot be taxed.

14. We have considered the submissions from both sides. It is undisputed the rights were originally granted to ZEEL at which time they were not taxable. Had ZEEL continued to use the rights for the full 10 years no tax would have been payable. Had an agreement been reached whereby the rights were returned by ZEEL to the appellant for a consideration that could have been a consideration for termination of the original contract. Thereafter, had the appellant sold the rights to IMGR or to any other entities, it would have been taxable under section 65 (105) (zzzzr). The tripartite agreement which has been entered into has effectively circumvented this situation by transferring the rights from ZEEL to IMGR directly with the concurrence of the appellant for a consideration known as the termination fee paid by IMGR to ZEEL. The appellant has not rendered any service in this agreement, but has concurred to the agreement whereby the rights were transferred from ZEEL to IMGR. In our considered

view, such concurrence by one to the transfer of rights from A to B does not amount to rendering any service. We are also of the opinion that the amount paid by IMGR to ZEEL on behalf of the appellant cannot be considered as an amount paid to the appellant for any service.

15. In view of the above, we find that the demand is not sustainable and needs to be set aside and we do so. Consequently, the question of interest and penalty and time bar become irrelevant.

16. The appeal is allowed with consequential relief to the appellant, if any. Early hearing application also stands disposed.

(Order pronounced in open court on **09.12.2022)**

(ANIL CHOUDHARY)
MEMBER (JUDICIAL)

(P.V. SUBBA RAO)
MEMBER (TECHNICAL)

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