

**CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
MUMBAI**

WEST ZONAL BENCH

SERVICE TAX APPEAL NO: 86132 OF 2021

[Arising out of Order-in-Original No: MUM/CGST/MW/COMMR/AK/42-43/2020-21 dated 26th February 2021 passed by the Commissioner of CGST, Mumbai West.]

Cinepolis India Pvt Ltd

IREO Grand View Towers, 14th Floor,
Golf Course Extn Road, Sector 58, Gurugram,
Haryana - 122011

... Appellant

versus

Commissioner of CGST

Mumbai West
Mahavir Jain Vidyalaya, CD Burfiwala Road,
Juhu Lane, Andheri (W), Mumbai

...Respondent

WITH

SERVICE TAX APPEAL NO: 86133 OF 2021

[Arising out of Order-in-Original No: MUM/CGST/MW/COMMR/AK/42-43/2020-21 dated 26th February 2021 passed by the Commissioner of CGST, Mumbai West.]

Cinepolis India Pvt Ltd

IREO Grand View Towers, 14th Floor,
Golf Course Extn Road, Sector 58, Gurugram,
Haryana - 122011

... Appellant

versus

Commissioner of CGST

Mumbai West
Mahavir Jain Vidyalaya, CD Burfiwala Road,
Juhu Lane, Andheri (W), Mumbai

...Respondent

APPEARANCE:

Ms Ginita Bodani, Advocate for the appellant

Shri Anand Kumar, Additional Commissioner (AR) for the respondent

CORAM:

HON'BLE MR C J MATHEW, MEMBER (TECHNICAL)
HON'BLE MR AJAY SHARMA, MEMBER (JUDICIAL)

FINAL ORDER NO: A / 86241-86242/2022

DATE OF HEARING: 25/08/2022
DATE OF DECISION: 22/12/2022

PER: C J MATHEW

These appeals of M/s Cinapolis India Pvt Ltd, against order-in-original no. MUM/CGST/MW/COMMR/AK/42-43/2020-21 dated 26th February 2021 of Commissioner of CGST, Mumbai West, arise from the unique deployment of constituents, that make up channel entities involved in exhibition of cinematographic films, in an arrangement by which several distributors participate in sharing of revenue with the appellant. The tax authorities concluded that these are distinct entities rendering service in de-mutualized capacity on 'principal-to-principal' basis and do not acquire status of partners in consequence of their agreement. Tax liability of ₹ 17,62,76,317/- on value of ₹ 1,33,58,26,691/- for the period from 2014-15 to 2015-16 was ordered for recovery under section 73 of Finance Act, 1994, along with appropriate interest under section 75 of Finance Act, 1994, besides being imposed with penalties under section 76 and 77 of Finance Act, 1994 leading to these appeals before us.

2. Learned Counsel for the appellants submits that the issue in dispute stands resolved by the decision of the Tribunal in *Reliance Mediaworks Limited v. Commissioner of Service Tax – VI, Mumbai* [final order no. A/85213/2022 dated 14th March 2022 in appeal no. ST/85873/2016 arising out of order-in-original no. 05/ST-VI/RK/2015 dated 30th November 2015 of Commissioner of Service Tax-VI, Mumbai]

3. We have heard Learned Authorised Representative.

4. We take note from the said decision of the Tribunal in *re Reliance Mediaworks Limited* that

‘19. The Civil Appeal filed by the Department (Commissioner vs. Mormugao Port Trust) against the aforesaid decision of the Tribunal was dismissed by the Supreme Court both on the ground of delay as well as on merits and the judgment is reported in 2018 (19) GSTL J 118 (SC).

20. The Circular dated 23.02.2009 issued by the Central Board of Excise and Customs, infact supports the case of the appellant. The relevant portion of the Circular, which is in connection with service tax on movie theatres, is reproduced below:

2.4. The arrangement most commonly entered into between a theater owner and a distributor is that the theater 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 theater owner by the

distributor irrespective of the fact whether the movie runs well or not. However, there is no rental arrangement between the theater owner and the distributor as in the arrangement at paragraph 2.1 above. A view has been expressed that in this arrangement, the theater owner provides 'Business Support Service' to the distributor and hence is liable to pay service tax on the fixed amount received by the theater 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 theater and the theater owner get a fixed rent. In such case, the service provided by the theater owner would be categorized as 'Renting of immovable property for furtherance of business or commerce' and the theater 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.

4. All pending cases may be disposed of accordingly. In case any difficulty is faced in implementing these instructions, the same may be brought to the notice of the undersigned."

(emphasis supplied)

21. The subsequent Circular dated 13.12.2011 issued by the Central Board of Excise and Customs, apart from the fact that it would not be applicable for confirming a demand for any period prior to 13.12.2011, would also not come to the aid of the Department. The relevant portion of the Circular is reproduced below:

9. Thus, where the distributor or sub-distributor or area distributor enters into an arrangement with the exhibitor or theatre owner, with the understanding to share revenue/profits and not provide the service on principal-to-principal basis, a new entity emerges, distinct from its constituents. As the new entity acquires the character of a "person", the transactions between it and the other independent entities namely the distributor/sub-distributor / area distributor and the exhibitor etc will be a taxable

service. Whereas, in cases the character of a “person” is not acquired in the business transaction and the transaction is as on principal-to-principal basis, the tax is leviable on either of the constituent members based on the nature of the transaction and as per rules of classification of service as embodied under Sec 65A of Finance Act, 1994.

(emphasis supplied)

22. *In view of the decision of the Supreme Court in Faqir Chand Gulati and the decision of the Tribunal in Mormugao Port Trust, no service tax can be levied on the appellant under BSS.*

23. *All the aforesaid issues were also examined at length by a Division Bench of the Tribunal in Inox Leisure Ltd. and the order passed by the Commissioner was set aside.*

24. *The Department filed Civil Appeal No. 1335 of 2020 (The Commissioner of Service Tax vs. Inox Leisure Ltd) before the Supreme Court and by order dated 28.02.2022, the Supreme Court dismissed the Civil Appeal holding that the Tribunal had taken an absolutely correct view, to which the Supreme Court agreed. The order passed by the Supreme Court is reproduced below:*

“No case is made out to interfere with the impugned order passed by the Customs, Excise and Service Tax Appellate Tribunal (for short, ‘CESTAT’). The CESTAT has taken an absolutely correct view, to which we agree. Hence, the Civil Appeal stands dismissed.”

the contention of Learned Counsel is correct.

5. Respectfully following the decision *supra*, we set aside the impugned order and allow the appeals.

(Order pronounced in the open court on 22/12/2022)

(AJAY SHARMA)
Member (Judicial)

(C J MATHEW)
Member (Technical)

