CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL CHANDIGARH

REGIONAL BENCH - COURT NO. I

Service Tax Appeal No.60379/2013-CU(DB)

(Arising out of Order-in-Original No. 51 to 55/AKM/CST/ADJ/2013 dated 1.8.2013 passed by the Commissioner (Adjudication), Service Tax, IAEA House, 17B, IP Estate, M.G.Marg, New Delhi)

M/s International Merchandizing Corporation **Appellant**
(Building No.5, 16th Floor, Tower C, DLF Cyber City, DLF Phase-III, Gurugram-122002)

VERSUS

Commissioner of Service Tax, Delhi **Respondent**
(M G Marg, 17B, IAEA House, I.P.Estate, Delhi,)

WITH

ST/60380 to 60383/2013-CU(DB)

(Arising out of Order-in-Original No. 51 to 55/AKM/CST/ADJ/2013 dated 1.8.2013 passed by the Commissioner (Adjudication), Service Tax, IAEA House, 17B, IP Estate, M.G.Marg, New Delhi)

M/s International Merchandizing Corporation **Appellant**
(Building No.5, 16th Floor, Tower C, DLF Cyber City, DLF Phase-III, Gurugram-122002)

VERSUS

Commissioner of Service Tax, Delhi **Respondent**
(M G Marg, 17B, IAEA House, I.P.Estate, Delhi,)

APPEARANCE:
Shri Ashok Dhingra, Ms.Sonia Gupta and Sh.Devang Bhasin, Advocates
Shri Vijay Gupta, Authorised Representative for the Respondent

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CORAM: **HON'BLE MR. S.S.GARG, MEMBER (JUDICIAL)**

HON'BLE MR. SANJIV SRIVASTAVA, MEMBER (TECHNICAL)

FINAL ORDER NO. 60386-60390 of 2020

DATE OF HEARING: 19.02.2020
DATE OF DECISION: 29.05.2020

Per Sanjiv Srivastava

These appeals are directed against order in original No. 51 to 55/AKM/CST/ADJ/2013 dated 1.8.2013 of the Commissioner (Adjudication), New Delhi. By the impugned order Commissioner has held as follows:

"ORDER"

(I) In respect of SCN C. No. I-26(494)ST/Adt/B-V/IMC/120/2442 dated 20.10.09 :-

(i) **I confirm** the following demands of **service tax** of rupees –

S.No	Figures in number/Rs	Figures in words
1	1,78,42,092	rupees one crore seventy eight lac forty two thousand ninety two only including education cess/SHEC
2	22,11,058	rupees twenty two lac eleven thousand fifty eight only including education cess/SHEC
3	12,11,624	rupees twelve lac ninety eleven thousand six hundred twenty four only including education cess/SHEC
Total	**2,12,64,774**	**rupees two crore twelve lac sixty four thousand seven hundred seventy four only including education cess/SHEC**

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upon **M/s International Merchandising Corporation** under proviso to Section 73(1) of the Finance Act, 1994 as amended;

(ii) I further **confirm** the demand of **Cenvat credit** taken / utilized wrongly amounting to **Rs.16,73,297/-** (rupees sixteen lac seventy three thousand two hundred ninety seven only) against **M/s International Merchandising Corporation,** under proviso to Section 73(1) of the Finance Act, 1994 as amended; and,

(iii) **I drop** the demand of **service tax** of **Rs. 1,17,85,167/-** (rupees one crore seventeen lac eighty five thousand one hundred sixty seven only) including education cess/SHEC upon **M/s International Merchandising Corporation.**

(iv) I hereby order for recovery of interest on **service tax amount** as above at applicable rates on the delayed payment of Service Tax including EC and SHEC from **M/s International Merchandising Corporation** under the provisions of **Section 75** of the Finance Act, 1994 from the due date till the date of actual deposit of the said amount.

(v) I hereby order for recovery of **Cenvat credit** amount as above along with interest at applicable rates on the delayed payment of Service Tax including w from **M/s International Merchandising Corporation** under the provisions of **Section 73/75** of the Finance Act, 1994 read with **Rules 14** of CCR 2004 from the due date till the date of actual deposit of the said amount.

(vi) I impose a penalty of Rs. 10000/- under **Rules 15 (3)** of **Cenvat Credit Rules 2004** read with Section 77 of the erstwhile provisions of Finance Act, 1994 upon **M/s International Merchandising Corporation** for various commissions and omissions made by them.

(vii) I impose a further penalty of Rs. 5000/- under **Rules 15A** of **Cenvat Credit Rules 2004** upon **M/s International Merchandising Corporation** who contravened the provisions of these rules for which no penalty has been provided in the rules.

(viii) I impose penalty on **M/s International Merchandising Corporation** under the provisions of **Section 76** of the Act ibid which shall not be less than two hundred rupees for every day during which such failure continues or at the rate of two percent of such tax per month whichever is

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higher, commencing with the first day after the due date till the date of actual payment of the outstanding amount of service tax.

(ix) I impose a penalty of Rs. 10000/- (rupees ten thousand only) under **Section 77** of the erstwhile provisions of Finance Act, 1994 upon **M/s International Merchandising Corporation** for various commissions and omissions made by them as referred hereinabove. Such amount of penalty will, however, not exceed the service tax amount.

(x) I hereby impose penalty of **Rs. 2,50,00,000/-** (rupees two crore fifty lac only)) under the provisions of **Section 78 / Rule 15** of the Finance Act / Rules, 1994 on **M/s International Merchandising Corporation** for deliberately suppressing the relevant facts/details and premeditated intent to evade payment of proper Service Tax. They can, however, avail of the benefit of the proviso to Section 78 wherein it has been laid down that if they deposit the entire amount of Service tax along with the interest within 30 days from the date of the communication of the order, then the penalty amount under Section 78 shall be reduced to 25% provided the reduced penalty is also paid within the same time frame as specified above.

(II) In respect of SCN C.No. D-III/ST/R II/SCN/IMC/79/09/924 dated 20.04.10:-

(i) I **confirm** the following demands of **service tax** of rupees –

S.No	Figures in number/Rs	Figures in words
1	11,70,080	rupees eleven lac seventy thousand eighty only including education cess/SHEC
2	10,35,403	rupees ten lac thirty five thousand four hundred three only including education cess/SHEC
Total	**22,05,483**	**Rupees twenty two lac five thousand four hundred eighty three only including education cess/SHEC**

upon **M/s International Merchandising Corporation** under proviso to Section 73(1) of the Finance Act, 1994 as amended;

(ii) I further **confirm** the demand of **Cenvat credit** taken / utilized wrongly amounting to **Rs.5,608/-** (rupees five thousand six hundred eight only) against **M/s International Merchandising Corporation,** under proviso to Section 73(1) of the Finance Act, 1994 as amended.

(iii) I hereby order for recovery of **interest** on service tax amount as above at applicable rates on the delayed payment of Service Tax including EC and SHEC from **M/s International**

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Merchandising Corporation under the provisions of **Section 75** of the Finance Act, 1994 from the due date till the date of actual deposit of the said amount.

(iv) I hereby order for recovery of **Cenvat credit** amount along with interest at applicable rates on the delayed payment of Service Tax including Education Cess from **M/s International Merchandising Corporation** under the provisions of **Section 73/75** of the Finance Act, 1994 read with **Rules 14** of CCR 2004 from the due date till the date of actual deposit of the said amount.

(v) I impose a penalty of Rs. 2500/- under **Rules 15 (3)** of **Cenvat Credit Rules 2004** read with Section 77 of the erstwhile provisions of Finance Act, 1994 upon **M/s International Merchandising Corporation** for various commissions and omissions made by them.

vi) I impose a further penalty of Rs. 5000/- under **Rules 15A** of **Cenvat Credit Rules 2004** upon **M/s International Merchandising Corporation** who contravened the provisions of these rules for which no penalty has been provided in the rules.

vii) I impose penalty on **M/s International Merchandising Corporation** under the provisions of **Section 76** of the Act ibid which shall not be less than two hundred rupees for every day during which such failure continues or at the rate of two percent of such tax per month whichever is higher, commencing with the first day after the due date till the date of actual payment of the outstanding amount of service tax.

(viii) I impose a penalty of Rs. 10000/- (rupees ten thousand only) under **Section 77** of the erstwhile provisions of Finance Act, 1994 upon **M/s International Merchandising Corporation** for various commissions and omissions made by them as referred hereinabove. Such amount of penalty will, however, not exceed the service tax amount.

(III) In respect of SCN C.No. D-III/ST/R II/SCN/IMC/79/09/1735 dated 20.04.11:-

(i) **I confirm** the following demands of **service tax** of rupees –

S.No	Figures in number/Rs	Figures in words
1	35,44,657	Rupees thirty five lac forty four thousand six hundred fifty seven only including education cess/SHEC
2	40,10,623	Rupees forty lac ten thousand six hundred twenty three only including education cess/SHEC
Total	**75,55,280**	**Rupees seventy five lac fifty five thousand two hundred eighty only including education cess/SHEC**

upon **M/s International Merchandising Corporation** under proviso to Section 73(1) of the Finance Act, 1994 as amended;

(ii) I hereby order for recovery of interest on service tax amount as above at applicable rates on the delayed payment of Service Tax including EC and SHEC from **M/s International Merchandising Corporation** under the provisions of **Section 75** of the Finance Act, 1994 from the due date till the date of actual deposit of the said amount.

(iii) I impose penalty on **M/s International Merchandising Corporation** under the provisions of **Section 76** of the Act ibid which shall not be less than two hundred rupees for every day during which such failure continues or at the rate of two percent of such tax per month whichever is higher, commencing with the first day after the due date till the date of actual payment of the outstanding amount of service tax.

(iv) I impose a penalty of Rs. 10000/- (rupees ten thousand only) under **Section 77** of the erstwhile provisions of Finance Act, 1994 upon **M/s International Merchandising Corporation** for various commissions and omissions made by them as referred hereinabove. Such amount of penalty will, however, not exceed the service tax amount.

(IV) In respect of SCN C.No. D-III/ST/R II/SCN/IMC/79/09/1735 dated 23.03.12:-

(i) I **confirm** the following demands of **service tax** of rupees –

S.No	Figures in number/Rs	Figures in words
1	26,26,061	Rupees twenty six lac twenty six thousand sixty one only including education cess/SHEC
2	12,97,526	Rupees twelve lac ninety seven thousand five hundred twenty six only including education cess/SHEC
3	5,81,002	Rupees five lac eighty one thousand two only including education cess/SHEC
Total	**45,04,589**	Rupees forty five lac four thousand five hundred eighty nine only including education cess/SHEC

upon **M/s International Merchandising Corporation** under proviso to Section 73(1) of the Finance Act, 1994 as amended;

(ii) I hereby order for recovery of **interest** on service tax amount as above at applicable rates on the delayed payment of Service Tax including EC and SHEC from **M/s International**

Merchandising Corporation under the provisions of **Section 75** of the Finance Act, 1994 from the due date till the date of actual deposit of the said amount.

(iii) impose penalty on **M/s International Merchandising Corporation** under the provisions of **Section 76** of the Act ibid which shall not be less than two hundred rupees for every day during which such failure continues or at the rate of two percent of such tax per month whichever is higher, commencing with the first day after the due date till the date of actual payment of the outstanding amount of service tax.

(iv) I impose a penalty of Rs. 10000/- (rupees ten thousand only) under **Section 77** of the erstwhile provisions of Finance Act, 1994 upon **M/s International Merchandising Corporation** for various commissions and omissions made by them as referred hereinabove. Such amount of penalty will, however, not exceed the service tax amount.

(V) In respect of SCN C.No. D-III/ST/R II/SCN/IMC/79/09/1735 dated 23.04.13:-

(i) **I confirm** the following demands of **service tax** of rupees –

S.No	Figures in number/Rs	Figures in words
1	1,13,521	Rupees one lac thirteen thousand five hundred twenty one only including education cess/SHEC
2	63,34,219	Rupees sixty three lac thirty four thousand two hundred nineteen only including education cess/SHEC
3	45,80,423	Rupees forty five lac eighty thousand four hundred twenty three only including education cess/SHEC
Total	**1,10,28,163**	**Rupees one crore ten lac twenty eight thousand one sixty three only including education cess/SHEC**

upon **M/s International Merchandising Corporation** under proviso to Section 73(1) of the Finance Act, 1994 as amended;

(ii) I hereby order for recovery of **interest** on service tax amount as above at applicable rates on the delayed payment of Service Tax including EC and SHEC from **M/s International Merchandising Corporation** under the provisions of **Section 75** of the Finance Act, 1994 from the due date till the date of actual deposit of the said amount.

(iii) I impose penalty on **M/s International Merchandising Corporation** under the provisions of **Section 76** of the Act ibid which shall not be less than two hundred rupees for every day during which such failure continues or at the rate of two percent of such tax per month whichever is

which such failure continues or at the rate of two percent of such tax per month whichever is higher, commencing with the first day after the due date till the date of actual payment of the outstanding amount of service tax.

(iv) I impose a penalty of Rs. 10000/- (rupees ten thousand only) under **Section 77** of the erstwhile provisions of Finance Act, 1994 upon **M/s International Merchandising Corporation** for various commissions and omissions made by them as referred hereinabove. Such amount of penalty will, however, not exceed the service tax amount.

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2.1 Appellant is engaged in providing diversified sports, entertainment and media services and have offices in Mumbai, Chennai, Delhi and Gurgaon. Prior to 22.02.2008, they had registration in the name of their Delhi Office, subsequently they got registration at their Gurgaon Office premises.

2.2 Their records were audited by the officers of Delhi Service Tax Commissionerate during May 2009 for the period 2004-05 to 2007-08. On the basis of audit objections a number of show cause notices have been issued to them.

2.3 Commissioner Adjudication has vide the impugned order adjudicated five show cause notices, namely the notices dated 20.10.2009, 20.04.2010, 20.04.2011, 23.03.2012 and 23.04.2013.

2.4 Aggrieved by the impugned order Appellants have preferred this appeal before CESTAT.

3.1 We have heard Shri Shubham Gupta, Advocate for the Appellant and Shri Rajeev Gupta, Commissioner and Shri Vijay Gupta, Superintendent, Authorized Representatives for the revenue.

3.2 Arguing for the appellant's learned advocate submitted:-

- Matter has been adjudicated in respect of the notices dated 23.03.2012 and 23.04.2013, without jurisdiction and without providing them any opportunity for hearing in the matter. For the reason of lack of jurisdiction and violation of Principles of Natural

Justice adjudication order in respect of these two show cause notices needs to be set aside as has been held in the following:

- Uma Nath Pandey Vs State of Uttar Pradesh [2009 (237) ELT 241 (SC)];
- CBEC Circular No 7/2000 dated 27.07.2000;
- East West Freight Carriers Pvt Ltd [2013 (303) 454 (SC)];
- Deepak Agro Vs State of Rajasthan [2009 (16) STR 518 (SC)];

➢ Extended period as per section 73 of the Finance Act has been invoked for making the demand in Show Cause Notice date 20.10.2009, 20.04.2010 and 20.04.2011.

- Extended period of limitation could not have been invoked in the matter relating to interpretation of taxing statute as per the decisions in case of-
  - Indian Hotels Co Ltd [2014 (36) STR 1268 (T)]
  - Sharda Udyog [2015 (39) STR 1036 (T)]
  - Romson Juniors [2018-TIOL-507-CESTAT-All]
- Once the show cause notice has been issued invoking extended period, show cause notice for the subsequent periods cannot be issued invoking extended period again as per decisions in case of-
  - DSM Anti Infectives India Ltd [2017 (4) GSTL 280 (T)]
  - Nizam Sugar Factory [2006 (197) ELT 465 (SC)]

➢ Demand of Service Tax has been made on a reverse charge basis in respect of the services classifiable in three different categories, without quantifying the value of services and service tax payable

against each category separately. Such an approach to confirm the demand by taking the value of foreign exchange expenditure yearly for quantifying the demand, rather than determining the expenditure made for each of taxable service is contrary to the decision in the case of Dharambir Singh & Co [2018 (8) GSTL 440 (T)]:

- **Demand under the category of Manpower Recruitment and Supply Services**
  - Demand under this category has been made in respect of payments made to players like Vijay Amritraj for appearance in Chennai Open Tennis Tournament, and paid for secondment of employees of IMC DBA New York, USA for Lakme Fashion Week event organized by them.
  - Demand made in respect of the Fees paid to Vijay Amritraj for appearance in Chennai Open Tennis cannot be sustained in this category as has been held in the case of Airbus Group India Pvt Ltd [2016 (45) STR 120 (T)] and CBEC Circular No 96/7/2007 dated 23.08.2007
  - Secondment of employees to a group company in India is not liable to Service Tax as has been held in case of:-
    - LEA International Ltd [2018-TIOL-480-CESTAT];
    - Convergys India Services Pvt Ltd [2017-TIOL- 4170-CESTAT];
    - Airbus Group India Pvt Ltd [2016 (45) STR 120 (T)]

- Demand under the category of **Intellectual Property Right Services**, has been made in respect of the fees recovered by them for registration of trademark of Fashion Week on behalf of IMC USA. The said fees was paid by them at time of registration and subsequently recovered from IMC USA. As per Section 65 (105) (zzzr), '*any service or to be provided to any person by the holder of intellectual property right in relation to intellectual property is taxable service.'* And in terms of Section 65 (55b), *'Intellectual Property Service means transferring temporarily or permitting the use or enjoyment of any intellectual property right.'* Since the activity of registration of trade mark as undertaken by them on behalf of IMC USA, is not in relation to any transference or enjoyment of any Intellectual Property Right, the same could not have been taxed in this category.
- Demand under the category of **Management and Business Consultant Services** have been made in respect of expenditure related to Software and SAP Usage Charges paid by them to IMG USA. Demand made on such expenditures under this category is contrary to the decisions in following cases:
  - Tata Technologies Ltd [2007 (8) STR 358 (T)]
  - Historic Hotel Resorts Pvt Ltd [2018 (18) GSTL 9 (T)]
  - Reliance ADA Group Pvt Ltd [2016 (43) STR 272 (T)]
- Demand in the category of **Programme Producer Services** has been made in respect of "Other Broadcast Income" and "Footage Sale Income" reflected in their book of accounts. They were

engaged in organizing sports event like “Chennai Open Tennis Tournament” and Fashion Events like “Lakme Fashion Week”. The live feeds of these events were recorded and sold to various domestic and international TV Channels for broadcast, against agreed consideration. Hon’ble Tribunal has in following cases held that such a sale is of right to broadcast, is not a service but the activity of sale and service tax is not leviable:

- BCCI [2007 (7) STR 384 (T)]
- Royal Western India Turf Club Ltd [2015 (38) STR 811 (T)]

➢ Further sale of right was made a separately classifiable service under the category as defined by Section 65 (105) (zzzzr) with effect from 01.07.2010. It is settled by the decisions as follows that when a separate category is made taxable from a particular date, without amending any taxable category that existed prior to that date, then it has to be interpreted that earlier entries did not covered the activities now taxable under new category:-

- Balaji Telefilm Ltd [2016 (46) STR 498 (T)]
- BBC World Services India Pvt Ltd.[2018-TIOL-607- CESTAT-DEL]
- Radaan Media Works India Ltd [2018-TIOL-2266- CESTAT-DEL]
- CBEC Letter issued under F.No 334/1/2010-TRU dated 26.02.2010

➢ They organize various events for which they also procure sponsorships. Such sponsorships are covered by the definition of

Sponsorship services as per Section 65 (105)(zzzn) of Finance Act, 1994. However sponsorships in respect of sport events are excluded by the exclusion clause, as has been held in case of Vodafone Cellular Ltd [2017 (51) ELT 26 (T)]. Further as in case of payments made by Hitachi, Hitachi India the service provider is located in India and hence demand if any is to be made from the service provider. Further in case where the sponsor is located outside India the service shall amount to export of service and hence cannot be subjected to service tax as have been held in following cases-

- Blue Star Ltd [2016 (46) STR 59 (T)]
- Greater Pacific Capital Pvt Ltd [2015 (38) STR 656 (T)]
- SBI Cards and Payment Services Pvt Ltd [2018-TIOL-326-CESTAT]

3.3 Arguing for the revenue learned authorized representative while reiterating the findings recorded in impugned order submitted as follows:-

- Since, issues involved in all the five SCNs were common, hence, all were taken up for adjudication by a common order.
- During audit and subsequently also, the party failed to provide service wise and period wise information w.r.t. expenditure incurred in foreign currency under each head of service, hence, demand was raised as consolidated amount spent under head 'Foreign Exchange Expenditure'. Since, the rate of tax is same

under all the heads, it does not make any difference for the purpose of calculation of Service Tax payable by the party. Even the party vide its letter dated 11.06.2009 submitted that they have deposited the Service Tax on foreign currency expenditure wherever applicable and further submitted that no further liability exists at their end. But they never provided breakup of expenses chargeable under reverse charge.

- The demand for the period prior to 18.04.2006 has been dropped by the adjudicating authority being not taxable.
- Non Payment of Service Tax under Manpower Recruitment and Supply Agency Service under Reverse Charge.
  - The agreements entered into by the appellants are with M/s First Serve Entertainment and M/s SFX Sports Group for supply of sports personalities and fashion personalities.
  - The agreements are not with any individuals for their participation in the events.
  - As per the agreements, FSE/ SFX is responsible for the participation of the personalities.
  - This shows that the manpower supplier is into the business of supply of persons at various events world over.
  - The participation or appearance of player in the instant case is similar to that of an employee who may be taken in for employment temporarily or otherwise by a client.
  - It does not make any difference, whether the person is taken for a temporary period or a longer period.

- In the instant case the word 'Player' has replaced the word 'Manpower' and the event is the place where workforce is required.
- From above it emerges that FSE has caused availability and presence of the players from outside India.
- They have been paid an agreed amount.
- The appellants have not placed on record to suggest that players have participated on their own. But as per the agreement, FSE has caused their participation as per requirement of IMG.
- Similar scenario involved in the case with regard to appearance and participation of other players/ manpower supplied by outside agency, namely, SFX Sports Group of Texas, USA
- Similarly, the appellants have paid fee for appearance of fashion experts from outside India.

➢ **Intellectual Property Service (Under Reverse charge)**

- On perusal of the documents, it is made out that the Trademark "INDIA FASHION WEEK" is owned by IMC (an Ohio Corporation) USA and they filed an application for registration through an Indian Law firm, whose payment has been made by the appellants.
- This trademark has been used by the appellants in India and consideration paid to IMC (an Ohio Corporation) USA.

- **Management or Business Consultant Service (Under Reverse charge)**
  - The amount has been remitted for use of information technology services relating to the computer software and the software of SAP.
  - Such activities are covered under the definition of MBC and hence, are chargeable to Service Tax under reverse charge.
- **Service Tax under Programme Producer Services**
  - The appellants have produced different programmes for telecast on TV Channels like Zee TV. Such production falls under the category of Programme Producer services and is taxable.
  - The definition says in plain words that a programme means audio or visual matter which is live or recorded to be intended for dissemination through cable/ televisions or by broadcasters only for a view by general public through relay stations.
  - Board's letter F No B2/8/04-TRU dated 10.09.2004 is referred in this regard.
  - CESTAT Mumbai Bench in Board of Control For Cricket in India Vs CST Mumbai-II reported as 2015(37) STR 785 (Tri Mum) has also held that S Tax is payable in respect of such services.

- The appeal filed by the party against above order of Hon'ble Tribunal has been dismissed by Hon'ble Supreme Court of India. – 2015 (37) STR J176 (SC).
- In this regard, reliance is also placed on CESTAT decision in Board of Control For Cricket in India Vs CST Mumbai-II reported as 2019(29) GSTL 304 (Tri Mum).
- Reliance is also placed on Board of Control For Cricket in India Vs Commissioner reported as 2019 (21) GSTL J83 (Tri Mum)

4.1 We have considered the impugned order with submissions made in appeal, during the course of arguments and in written submissions.

4.2 We have framed following issues for consideration in this case:

I. Demand of Service Tax-
   a. Manpower Recruitment and Supply Services (Reverse Charge)
   b. Intellectual Property Right Service (Reverse Charge)
   c. Management and Business Consultant Services (Reverse Charge)
   d. Programme Producer Services
   e. Sponsorship Services

II. Limitation

III. Natural Justice

IV. Jurisdiction

I. Demand of Service Tax

4.3 Appellants are engaged in organizing various sports and fashion events. One of the Sport Events organized by them was the Chennai Open Tennis Tournament. For this event they availed the services of Vijay Amritraj (renowned tennis player) to participate in the opening and closing events of the tournament and also play a charity match to be organized during the course of the tournament. At page 33 of the order, the adjudicating authority has placed on record a certified copy of an invoice attached to the agreement with First Serve Entertainment (FSE) relating to the appearance and participation of Vijay Amritraj (a renowned tennis player) in Chennai Open Tennis Championship 2007. The relevant portion of the agreement is as under :

"Appearance and participation: IMG hereby engages FSE for appearance and participation of Amritraj of First Serve in connection with Chennai Open. Amritraj will appear and participate in the opening and closing ceremonies and play in the charity auction match at the Chennai Open. FSE hereby accepts such engagement and agrees to cause Amritraj to appear and participate in the Chennai Open in accordance with all applicable laws and regulations.

Fees : in consideration for the participation of Amritraj, IMG agrees to pay FSE an annual fee in the amount of USD.....each fee will be paid to FSE after the conclusion of the Chennai Open in each year upon the presentation of an invoice from FSE to IMG....."

4.4 Section 65(68) of Finance Act, 1994 as amended defined *'**Manpower recruitment or supply agency'** means any person engaged*

in providing any service, directly or indirectly, in any manner for recruitment or supply of manpower, temporarily or otherwise, to any other person'. First issue for consideration is what is the scope of the above definition and whether FSE will be covered within the said scope. Central Board of Excise and Customs, have vide Circular No 96/7/2007-ST dated 23.08.2007 clarified in this matter explaining the scope as follows:

010.02/ 23.08.07	*Business or industrial organisations engage services of manpower recruitment or supply agencies for temporary supply of manpower which is engaged for a specified period or for completion of particular projects or tasks. In the case of supply of manpower, individuals are contractually employed by the manpower recruitment or supply agency. The agency agrees for use of the services of an individual, employed by him, to another person for a consideration.*	*Employer employee relationship in such case exists between the agency and the individual and Whether service tax is liable on such services under manpower recruitment or supply agency's service [section 65(105)(k)] not between the individual and the person who uses the services of the individual.* *Such cases are*

		covered within the scope of the definition of the taxable service [section 65(105)(k)] and, since they act as supply agency, they fall within the definition of "manpower recruitment or supply agency" [section 65(68)] and are liable to service tax.

4.5 In case of Safe & Sure Marine Services, [2013-TIOL-1741-CESTAT-MUMBAI] Mumbai Bench of CESTAT held as follows:

"5.3 In the present case, there are agreements entered into with the clients for recruitment and supply of manpower. We have perused these agreements. As per the agreement entered into with M/s ABG Shipping Ltd, vide agreement dated 1.4.2002, the responsibility of the appellant was for providing the necessary competent, certified and experienced personnel so as to ensure efficient running and maintenance of the vessel and the appellant, as Manning Contractor, agreed to provide to

the owner of the such vessel such personnel for the said purpose on the terms and conditions mutually agreed upon. Clause 3.1 of the said agreement makes it absolutely clear that the appellant was required to provide certified and experienced officers/crew to the owner of the vessel and the charges were collected for the various categories of crew deployed on per man per day basis as provided in clause 3.12 of the agreement in addition to a consolidated sum of Rs.4.64 lakhs per calendar month towards supply of 8 officers and 8 crews in terms of clause 5.1 of the agreement. Clause 6.1 also makes it clear that the crews engaged in the ship are the employees of the appellant, who has to ensure payment of wages and other statutory dues, to the employees. Similarly, in the agreement entered into with M/s Pranik Shipping Services Ltd., the appellant was engaged as a Manning Manager for providing competent, certified and experienced personnel on the vessel as required for running and maintenance of the vessel and the agreement was valid for a period of 12 months. The responsibilities included engagement and providing the required personnel including Master, Chief Engineer, other Officers, Petty Officers and crew and to attend to all matters pertaining to their discipline, labour relations, welfare and amenities. The consideration was paid on per man per day basis for various categories of the personnel supplied in terms of clause 3.13 of the agreement. Thus this agreement also makes it clear that the appellant was engaged in supply of manpower to M/s Pranik Shipping. In the case of M/s SICAL, as per the Letter of Intent, the appellant was required to arrange for masters, officers and crew on-board the vessel

as required under the Merchant Shipping Act, 1958 and the appellant received a consideration of Rs.7.10 lakhs per month per vessel and the contract was for a period of one year. The appellant was also responsible to ensure that morale of the crew on-board is maintained so that they are able to discharge the functions efficiently. From these contracts/agreements, entered into by the appellant with his clients, it is clear that the appellant was engaged in supply of skilled /unskilled manpower. Therefore, the said activity is specifically and clearly covered under Manpower Recruitment or Supply Agency Service as defined under section 65(68) read with Section 65(105)(k) of the Finance Act, 1994 prior to 1.5.2006."

Similar view has been expressed by the tribunal in case of Jubilant Enpro Private Ltd [2018 ACR 279 CESTAT MUMBAI]

4.5 If the agreement between Appellant and FSE are examined in terms of the definitions of Manpower Supply & Recruitment Agency Services as per Section 65 (105)(k) read with Section 65 (68) of Finance Act, 1994 and the clarification issued by the Board and above decision of Tribunal, we conclude that services provided by M/s FSE are squarely covered under this category. Vijay Amritraj is a separate and distinct legal person from FSE, in which he may be one of the Directors. FSE has entered into agreement with Appellants for causing the appearance and participation of Vijay Amritraj in a tournament organized by the appellant against payment of agreed consideration. Hence we have no doubt in holding that FSE was in the business of supplying recruiting

and providing the players to the sport events organizers like appellant. Hence the services provided by such companies as FSE will be classified as Manpower Recruitment and Supply Agency Services as defined by the Finance Act at relevant times. Similarly position exists in respect of services received from SFX Sports Group of Texas.

4.8 In case of fees paid for secondment of employees of IMC DBA New York, USA for Lakme Fashion Week, an event organized by appellants we find that nothing has been placed on record that during the period of secondment, these employees of their USA counterpart worked in manner so as to create employer employee relationship between the appellants and those persons. These people continued in employment with the USA company and nothing like salary or remuneration was paid either in Indian or Foreign Currency, to these people by the Appellant. On the contrary, USA company has charged a fees or consideration, from the appellant for providing their employees to appellants for a specific purpose. Hence we have no hesitation in holding that the USA company has provided “Manpower Recruitment and Supply Services” to the Appellant.

4.7 The cases relied by the Appellant do not decide the issue in respect of “Manpower Recruitment and Supply Agency Services” in the facts as presented before us. In the case of Airbus Group Relied upon by the Appellant, is the case wherein, certain employees of the foreign company were deputed by the Foreign Company to the Indian Associated/ Group Company, for a limited time and limited purpose.

During the period of deputation all the expenses and remuneration to such employees was made by the Indian Company. The facts of the case are clearly distinguishable from the facts in which these decisions have been rendered and as such these decisions are not applicable in facts of the case before us. Thus we uphold the demand of Service Tax made under the category of *"Manpower Recruitment and Supply Agency Services"*.

4.8 Intellectual Property Right Services have been defined by the Finance Act, 1994 as follows:

"Taxable Service" means any service provided or to be provided to any person, by the holder of intellectual property right, in relation to intellectual property service;

[Section 65 (105) (zzr) of Finance Act, 1994 as amended]

"Intellectual Property Right" means any right to intangible property, namely, trade marks, designs, patents or any other similar intangible property, under any law for the time being in force, but does not include copyright;

[Section 65(55a) of Finance Act, 1994 as amended]

"Intellectual Property Service" means, —

(a) transferring, temporarily; or

(b) permitting the use or enjoyment of,

any intellectual property right;';

[Section 65(55b) of Finance Act, 1994 as amended]

4.9 Appellants in the present case undertook to register the trademark of their USA counterparts in India for organizing the event of Lakme Fashion Week. For registering they incurred certain expenses which were paid to them by the USA company. There was no transfer of the right temporarily, by the USA company, nor any permission was granted for use or enjoyment of any intellectual property. Nothing is forthcoming to show that there was such transfer or permission. Revenue has not been able to substantiate that the basis ingredients to hold that USA Company had provided any Intellectual Property Service as defined above to the appellant. Hence we are not in position to sustain the impugned order in respect of this demand.

4.10 Service Tax has been demanded in the category of Management and Business Consultant Services, in respect of certain usage charges paid by the Appellant's to their USA counterpart in respect of common software and SAP facilities created by them. Before addressing the issue in relation to the taxable category, the question which needs to be addressed is whether such payments made by the Appellant to their USA counterpart can be considered as payment towards provision of any service. Appellants is part of a group of companies located in India and elsewhere. Certain common facilities are created for usage of all the group companies. In this case, USA company created software and SAP facilities and incurred expenditure for the same. This expenditure has been distributed amongst all the group companies on a

proportionate basis depending upon the usage. It is a settled position that the payments made for creation of common facilities in a group company is not payment towards any service rendered, and hence cannot be subjected to Service Tax. In case of Historic Hotel Resorts Private Ltd [2018 (18) GSTL 9 (T)] after considering the past precedents tribunal has held as follows:

4. We have heard both the sides and perused the appeal records. The facts of the case are that the appellant alongwith group companies involved in similar business had an arrangement in writing to procure services which will help the appellant and group companies in sales, marketing and promotion of their business. Such services are provided by third parties and the payment is made by the appellant. Thereafter, the appellant shared the expenditure with other group companies on proportionate basis. The Original Authority held that the appellant as well as the other group companies are independent legal entities. Merely because the group companies have shared the expenditure incurred by the appellant on proportionate basis with no profit, they cannot be excluded from service tax liability. He considered that the appellants did provide service of promotion sales, marketing and related activities of group companies. The Original Authority held that the amount paid by group companies to the appellant is a taxable consideration. We note that the Original Authority also recorded that these services were actually rendered by third parties to the appellant. Apparently, it would mean that the appellants received the service and acted as procurer of such service for or on behalf of the group

companies. We find such inference is not factually as well as legally tenable. The appellant is not per-se engaged in promoting sales or business of group companies. No evidence to that effect has been brought out. In fact, the arrangement is all group companies will benefit from a sales promotion and other related activities of third parties, for which expenses are to be borne by the appellant and thereafter to be shared with other group companies. In such arrangement, we find no scope for tax liability on the part of the appellant under the category of BAS. We also note that the original order did not identify under which sub-clause of the tax entry BAS, the service tax is sought to be confirmed.

5. We note that the Hon'ble Supreme Court in Gujarat State Fertilizers and Chemicals Ltd. and Anr. Vs. CCE – 2016 –TIOL – 198 – SC – ST, examining a similar set of facts, held that sharing of expenditure for common facilities cannot be treated as service by one to another in such arrangement. The Tribunal in Old World Hospitality Limited vs. CST, New Delhi – 2017 – VIL – 97 – CESTAT – DEL – ST held as below :-

"8. It is clear from the terms of the agreement that IHC and the appellants have undertaken the business activities together and shared the revenue in a fixed proportion. The obligation of each party has been listed out. The dealings are more like co-venture agreement with joint purpose and shared income. This is also emphasized by forming of committee for tariff and quality in which both the contracting parties are representatives. The appellants are providing working capital, staff

and management skills to run the facilities. IHC owned the facilities and obtained necessary approvals, licenses, etc. Thus, the pooled resources for a mutual benefit, generated income, which was shared on percentage basis. While discharging one of the responsibilities the appellants reimbursed the expenses on actual basis. We find such arrangement is not liable to service tax under BAS. The overall scope of the agreement indicates that it is not for rendering of service by one to another. Rather a common pool of resources required for running and maintaining the facilities of IHC successfully was attempted in terms of the agreement and the gross revenue is also shared showing the common intent. For such situation, we do not find a service provider service recipient relationship liable to service tax".

6. Similarly, in Reliance Ada Group Pvt. Ltd. vs. CST, Mumbai – IV – 2016 (43) S.T.R. 372 (Tri. – Mumbai), the Tribunal observed as below :-

"5.3 Admittedly, the object of the appellant company as per the Memorandum of Association is to promote, manage, administer, counsel or otherwise assist in the growth and operation of the Group Companies. The said objective is pursued by way of entering into a cost sharing agreement with the Participating Group Companies. The services in question are provided by third parties and/or employees employed by the Appellant so that the cost thereof can be shared. The Appellant does not provide any services to the Participating Group Companies except coordinating and monitoring the cost sharing arrangement. The Appellant has entered into contract with each of the

Participating Group Companies to enable such cost sharing in respect of the specified activities to minimize the overall operational cost. The Agreements specify the appointment of the Appellant as a Trustee or Manager to obtain, hold and manage the resources required for jointly carrying out the activities. The Agreements also prescribe that the Participating Group Companies would share the cost of obtaining and employing resources in relation to the specified activities. Further, the Appellant shall be entitled for a fixed remuneration of Rs. One Crore per annum for acting as a manager. The Appellant has agreed to act as such Manager on the basis that the cost of obtaining and employing the resources would be distributed to and borne by the Participating Group Companies by sharing of costs of arrangement".

7. Recently, in the case of Ruchi Strips & Alloys Ltd. vs. CCE, Indore vide final order No. 53506 of 2017 dated 19/05/2017, the Tribunal observed as below :-

"6. Regarding a tax liability under "Business Auxiliary Services", I find that the appellant were getting certain considerations from their sister concern towards common pool expenses, dividend, refund of bond money etc. The appellant pleaded that there are common expenses for facilities like canteen, transportation within their group companies. There is no promotional activities involved in sharing the expenditure. I note that the impugned order simply recorded that all these services tantamount to provisions of services on behalf of the clients and accordingly, the appellants are liable to tax under "Business Auxiliary

Services". It is not clear as to what type of service is being provided by the appellant and on whose behalf. There is no third party involved at all, in the whole transaction. Certain common expenditure towards various facilities like canteen, transportation, etc. were shared among group companies. Such arrangement cannot be considered as activities taxable under "Business Auxiliary Services". In terms of Section 65(19) of the Finance Act, 1994, there should be either promotion or marketing of service or goods and various other auxiliary support services. In the arrangement, as discussed above, for availing certain facilities, the appellant is sharing expenditure with other group companies. There is no promotion activities in such arrangement. The impugned order did not discuss the legal scope of tax entry applicable to the case in hand and the same is not sustainable".

8. On perusal of the Memorandum of Arrangement dated 14/04/1999 and the legal position as discussed in the decided cases mentioned above, we find that there is no taxable service in the arrangement as discussed in the present appeal. …."

In view of the above we do not find merits in the demand confirmed by the impugned order under the category of Management and Business Consultant Services.

4.11 Appellants have contended that the services revenues sought to be taxed under the category of "Programme Producer Services" are not in respect of any services provided but are towards transfer of right to use and hence is an act of sale. In support of their contention they have

relied upon the decision of Tribunal In case of BCCI [2007 (7) STR 384 (T)] & Royal Western India Turf Club Ltd [2015 (38) STR 811 (T)].

4.12 The decisions in case of BCCI, relied upon by the Appellants is not on the subject of classification of services provided under taxable category, "Programme Producer Services". Para 1 of the said decision records the issue under consideration as follow:

"1. Both appeals filed by the appellant as also filed by Revenue are being disposed off by a common order. The appeal No. ST/251/2005 stands filed by Board of Cricket Control in India (hereinafter referred to as BCCI) against Order-in-Appeal dt.30.06.05, passed by Commissioner (Appeals) of Central Excise, Mumbai vide which he has confirmed the demand of service tax of Rs. 11,19,61,602 (Rs. Eleven Crores, Nineteen Lakhs, sixty one thousands, six hundred and two only) in respect of amount received by the appellants towards sale of television rights, sponsorship money, and logo money holding that the same is covered by the definition of ***taxable service provided by the advertising agency……****"*

Since this decision is not in respect of the subject under consideration, the decision is distinguishable.

4.13 Issue under consideration was considered by Mumbai Bench of Tribunal in the case of Board of Cricket Control for India Vs Commissioner [2015 (37) ELT STR 785 (T-MUM)] holding that the activity of recording the live cricket match for providing feed to TV channels is activity covered under the taxable category of "Programme

Producer Services" and will be subjected to Service Tax. This decision has been upheld by the Apex Court [2015 (37) STR J176 (SC)]. In the said decision Tribunal has held as follows:

"6. We have carefully considered the submissions made by both the sides. We have also perused the contracts entered into with the service providers.

6.1 The agreement is titled as "Television production for international and domestic cricket". As per the recital in the contract entered into with M/s. Nimbus Sport International Pte. Ltd., the appellant has accepted the bid tendered by Nimbus Sport International Pte. Ltd. who has been referred to as 'the producer' in the agreement and has agreed to appoint the producer to produce audio visual coverage of the events on behalf of BCCI and the producer has undertaken to produce the audio visual coverage of the events for broadcasting on the terms and conditions stipulated in the agreement.

6.2 As per clause 2.1, BCCI has appointed the producer to exclusively produce the feed for and on behalf of BCCI and the feed means - the live and continuous clean audio and visual television signal of each match as described in detail in clause 3.2 of the agreement. Clause 3.1 of the agreement deals with production services and reads as - "the producer must produce the feed for each match of the events as per the production/technical specification detailed in schedule 3, using the personnel specified in clause 5, using the equipment specified in schedule 3 and otherwise in accordance with this agreement." Clause 3.2 specifies that the feed for each match must be live, continuous and uninterrupted and should be in conformity with the specifications mentioned in sub-clauses (a) to (g) thereof. Clause 4 of the agreement deals with the other obligations of the producer and clause 5 deals with personnel who should be engaged for production. Clause 6 deals with production and technical specifications relating to the equipment, use of the equipment, camera and key camera positions and so on. Clause 9 deals with assignment of the copyright by the producer to BCCI in respect of all the sound recordings, broadcasting and transmissions and so on. For the services rendered, clause 10 of the agreement specifies the consideration to be paid by BCCI to the producer for the production of the feed which includes all statutory taxes and charges, import duties and tariffs on imported materials and equipment, rise and fall, relevant award costs and allowances for the personnel.

6.3 Thus, from the terms of the contracts entered into by BCCI, it is amply clear that the non-resident service providers were producing a programme for and on behalf of BCCI. The question is whether this activity would come within the definition of "programme producer services". The taxable event is programme producer service as defined in the Finance Act, 1994. For ready reference, the relevant provisions of Section 65(86a) and 65(86b) are reproduced below :-

"(86a) "programme" means any audio or visual matter, live or recorded, which is intended to be disseminated by transmission of electro-magnetic waves through space or through cables intended to be received by the general public either directly or indirectly through the medium of relay stations;
(86b) "programme producer" means any person who produces a programme on behalf of another person"
From the reading of the contract, we find that the service provider has installed 30-32 cameras in the stadium to capture the images of the cricket match. The appellant has set up a broadcast control room (BCR) in the stadium where the match is played. The images taken by the cameras are transmitted to vision colour correction unit and the same are viewed by the experts and after processing, these images are transmitted to the director's vision desk.
6.4 The nature of activities undertaken by the service provider is as under :-
"(i) The broadcast control room (BCR) is set up by the company in the stadium. It has various units, viz. vision colour correction unit, Director's vision desk, sound engineer desk, replay desk, graphic desk, hawk eye unit, ball speed machine, other machine routers, commentary unit, monitor wall.
(ii) Around 30-32 cameras are fixed around the ground to take image of not only play but also of crowds and other happenings in the stadium.
(iii) The images taken by camera are transmitted to vision colour correction unit. Each engineer views the images taken by 4 to 6 cameras.
(iv) After processing, these images are transmitted to Director's vision desk and also at action replay unit. Images of all the cameras with their numbers are displayed on monitor wall having various screens supervised by Director. The Director in charge continuously instruct the desk in charge the camera number whose image is to be telecasted. The desk in charge press the button of said camera to send signal through router to satellite uplink unit.
(v) The BCR has sound engineer who records all types of sounds through the mike fitted around and on the ground. The Director in charge of sound desk decide the sound to be transmitted to Director's vision desk from where images are transmitted.
(vi) The BCR has action replay unit. The images in this unit is also transmitted to Director's vision desk. The images shown through these camera are given colour code. The Director in charge of vision unit keeps on continuously instructing the vision desk in charge the colour code. The images shown in the said colour code is finally telecasted.
(vii) The BCR has hawk eye unit which tracks each ball played.
(viii) The BCR has graphic unit, which produces graphic of average run rate, standing of various teams, score board etc. and as per instruction of Director in charge of vision desk, it is telecasted.

(ix) The sound and images are sent for recording in to video tape recorder and are also simultaneously sent for converting into audio video signals and sent out for uplinking to satellite uplink unit.

(x) The finally vended programme is transmitted to OB van stationed in the stadium from where it is sent to satellite for further transmission to household."

6.5 The taxable service has been defined under Section 65(105)(zzu) as "any service provided or to be provided to any person, by a programme producer, in relation to a programme". The Hon'ble Supreme Court in the case of *Doypack Systems Pvt. Ltd.* [1988 (36) E.L.T. 201 (S.C.)] has held that - 'the expression "in relation to" is a very broad expression which pre-supposes another subject matter. These are words of comprehensiveness which might have both a direct significance as well as an indirect significance depending on the context". The Hon'ble Bombay High Court in the case of *ONGC* v. *CCE*, *Raigad* [2013 (32) S.T.R. 31 (Bom.)] has held that - "where the legislature or its delegate uses the expression "in or in relation to", its object and purpose is to widen the scope and purview of its entitlement". In other words, these are expressions of width and amplitude and cover within its scope any activity which is in connection with the main activity. In this view of the matter, the activities undertaken by the non-resident service providers squarely falls within the definition of "programme" as defined in Section 65(86a) and the service providers are 'programme producers' as defined in Section 65(86b).

6.6 As regards the contention that in respect of Hawkeye Innovations Ltd., they were only supplying software programmes for recording, this contention does not seem to be flowing from the contract entered into with Hawkeye Innovations Ltd. A perusal of the agreement with Hawkeye Innovations Ltd. shows that Hawkeye Innovations was required to supply four units in connection with the production by IMG Media for BCCI of the world feed live coverage on the IPL in the seasons 2008, 2009 and 2010. Hawkeye Innovations was also required to supply three engineers for the recording of the events and the consideration was paid for supply of the equipment and the personnel for recording purposes. As already noted by us, any service in relation to 'programme producer's services' would also fall within the definition of "taxable service". Therefore, the services provided by Hawkeye Innovations by way of supply of equipment and personnel for recording the live programme and actually participating in such programme would also fall within the definition of 'programme producer's services' and we hold accordingly.

6.7 As regards the contract entered into with IMG S.A., the said agreement was for booking of hotel accommodation and transport of personnel in connection with the recording of cricket matches to be recorded by IMG U.K. These services *per se* will not qualify as 'programme producer's services' and they are in the nature of supporting services. The contract was a separate one and the service provided and received consisted of booking of hotel accommodation and arrangements for transportation. Therefore, though these services were in

connection with the production agreement with IMG Media, U.K. for recording of matches, they cannot be considered as production of any programme. The said service availed by the BCCI by sub-contracting the work to a different service provider would not come within the purview of "programme producer's services" and therefore, the demand of Service Tax on the consideration paid for the services under the category of programme producer's services service cannot be sustained in law. Therefore, demand to this extent has to be set aside.

6.8 The appellant has contended that since the definition of "programme" refers to audio or visual matter, if recording is done of both, i.e. audio as well as visual, the same would fall outside the definition of 'programme'. This contention is quite absurd. If audio recording can be a programme and a visual recording also can be a programme, a combination of both would also be a programme. As per the Principles of Statutory Interpretation by Justice G.P. Singh [12th Edition 2010 - page 477] the word 'or' is normally disjunctive and 'and' is normally conjunctive, but at times they are read as vice versa to give effect to the manifest intention of the Legislature as disclosed from the context [*Ishar Singh Bindra* v. *State of U.P.* - AIR 1968 SC 1450]. In page 478 of the said book, it is stated that "in Section 2(1)(d)(i) of the Bombay Lotteries and Prize Competition Control and Tax Act, 1948, the Supreme Court read 'or' as 'and' to give effect to "the clear intention of the Legislature as expressed in the Act read as a whole" [*State of Bombay* v. *RMD Chamarbaugwala* - AIR 1957 SC 699]". Applying these .principles to the facts of the present case, to give effect to the manifest intention of the legislature, the expression "audio or visual matter" can be read as "audio and visual matter". Therefore, we do not find any merit in the contention raised in this regard by the appellant.

6.9 As regards the contention that since the programme is produced on behalf of BCCI, there should be a third person, which is lacking in the present case, this contention is also not tenable. The statutory definitions of 'programme' and 'programme producer services' do not envisage the presence of a third party. Whether the programme is produced for BCCI or on behalf of BCCI, the transaction is complete. In any case, the programme is produced for dissemination by way of broadcasting to the general public and it is for the BCCI who has the rights over the programme, to decide and entrust the task of broadcasting to a third party. Thus the third party involved would be the broadcaster who will actually undertake dissemination of the programme produced by the non-resident service providers. This is evident from clause 2.1 of the agreement with Nimbus wherein it is stated that "BCCI appoints the producer to exclusively produce the Feed for and on behalf of BCCI. For the purpose of such appointment, BCCI hereby authorizes the Producer to produce the feed for delivery in accordance with this agreement." Clause 2.3 specifically provides that the rights of the Producer under clause 2.1 do not include the right to transmit the feed or both save to the extent necessary to perform its obligations

hereunder including but not limited to the delivery of the feed to the on-site gateway and to the producer's production facility". As per clause 3.3 the producer must deliver the feed for each match to the on-site gateway. By definition, on-site gateway is the satellite uplink point at each venue. From the gateway the broadcaster licenced by BCCI or its media rights partner exhibits the feed or part thereof within their specific licenced territory. Thus the third party involved is the Broadcaster authorized by BCCI. From the specific clauses mentioned in the agreement as discussed above, the programme has to be delivered to the Broadcaster authorized by BCCI. In view of the factual position as discussed above, we do not find any merit whatsoever in the contention that there is no third party involved and therefore, the production of the programme is not on behalf of BCCI. Consequently the reliance placed by the appellant on various decisions completely fails and in fact, they are not at all relevant."

4.14 Since the issues involved in the present case are identical to the case considered by Mumbai Bench referred above, in our view the order of Commissioner upholding the demand under the category of "Programme Producer Services" cannot be faulted with. Other decisions relied upon by the Appellant would not be applicable since we uphold the demand under the category of "Programme Producer Services" during the relevant period of demand.

4.15 The demand has been made in respect of the services classifiable under the category of "Sponsorship Services". This category of taxable service has been defined in the Finance Act,1994 as amended from time to time as follows: *"Sponsorship" includes naming an event after the sponsor, displaying the sponsor's company logo or trading name, giving the sponsor exclusive or priority booking rights, sponsoring prizes or trophies for competition; but does not include any financial or other support in the form of donations or gifts, given by the donors subject to the condition that the service provider is under no obligation to provide anything in return to such donors.*

(Section 65 (99)(a) of Finance Act, 1994 as amended)

"Taxable service" means any service provided or to be provided to any person, by any other person receiving sponsorship, in relation to such sponsorship, in any manner;"

(Section 65(105) (zzzn) of Finance Act, 1994 as amended)

4.16 In the present case undisputedly Appellant have received certain amounts from sponsor's towards sponsoring the various events and matches organized by them. Appellants do not dispute that the services so provided by them fall in the category of sponsorship services. However they dispute the confirmation of demand, for the reason that, in certain cases the service tax liability was on the service recipient, sponsorship was in respect of a sports event, or the service qualified as export of services. Show Cause Notice wise they submitted as follows:

	Show Cause Notice dated			
	20.10.09	20.04.10	20.04.11	23.03.12
Value on which Demand made	9802787	12979364	38938902	5640794
Export of Services	994826	1377230	445419	5640794
Service Tax to be paid by Recipient on reverse charge	1500000	0	0	0
Sponsorship of Sport Event	0	8773784	0	0
Service Tax paid on value	0	282835	4335491	0
Demand Confirmed on Value.	9802787	10151014	38938902	5640794

Joint Secretary (TRU) has vide his D O F No 334/4/2006 dated 28.02.2006, clarified at the time of introduction of the Finance Bill,

2006, proposing the amendments in Finance Act, 1994, to create this category of taxable service, as follows:

"3.10 SPONSORSHIP SERVICE: Body corporates or firms involved in business or commerce sponsor events with an intent to obtain commercial benefit or bringing their name or products or services in public image to public attention by associating with a popular or successful event. This is an alternate form of advertisement. Consideration is normally paid in return for naming of the event after the sponsor or displaying the sponsoring company's logo or trading name or giving the sponsor exclusive or priority booking rights. Service tax is leviable only when the sponsor is any body corporate or firm. ***Sponsorship of sports events is excluded from the scope of this levy. Proposal is also to collect service tax under reverse charge method from the recipient of service namely the body corporate or firm who sponsors the event. It may be noted that the organizers of events are not liable to pay service tax under sponsorship service."***

In respect of the claim made by the appellants that certain payments were received by them towards the sponsorship of sports event, or from the service recipient located outside India, or from service recipients located in India who were located in India, Commissioner should have recorded the finding in terms of the above provisions of the Finance Act, 1994 and the clarification as above issued by the Joint Secretary (TRU). If the claims made are justified these amounts should be deducted from the taxable value. Since the Commissioner has failed

to consider these submissions in the light of the above referred clarification issued by the Ministry, the matter needs to go back to the commissioner for consideration of these.

4.17 Appellants have submitted that demand in respect of the three taxable services received by them against foreign currency expenditure has been made collectively without specifying the quantum of expenditure that can be attributed to each of the services separately. We are in agreement with the submissions made by the Appellants, because as has been discussed in earlier paragraphs, we have upheld that on merits the demand is tenable in respect of one of the services and cannot be sustained in respect of the other two. How do we determine the portion of demand that is upheld. The approach of the Commissioner stating that since the rate of tax on the three services is the same so he can take the entire value of foreign currency expenditure together for determining the total demand is fallacious. Hence we are setting aside the entire demand made in respect of Foreign Currency Expenditure and remanding back the matter to the Commissioner for determination of value of taxable services in respect of which demands are to be confirmed separately. Appellants should make available to the Commissioner all the information that may be required/ called by him for determination of taxable value in respect of each service separately.

Limitation

4.18 Appellants have argued the matter on limitation the crux of their argument can be summarized to state that-

- ➢ The issue involved is that of interpretation hence extended period should not be invoked;
- ➢ Second show cause notice could not have been issued by invoking extended period of limitation.

4.19 We are not in position to accept any of the arguments advanced by the appellant. Except for the first show cause notice wherein demand has been made by invoking the extended period of limitation, in all subsequent show cause notices, demands have been made within the normal period of limitation. Hence we do not find any substance in the claim made by the Appellants that subsequent show cause notices have been issued on the same ground for making demand by invoking extended period of limitation. However, as the matter is being remanded back to the Commissioner, Appellants should make the submission in this respect and show to Commissioner that demand in subsequent show cause notice has been made by invoking extended period of limitation. Commissioner shall record his findings on the submissions made.

4.20 The issues which are raised and adjudicated, are all issues which would involve the interpretation of legal provisions. If the appellants claim that a certain issue was of interpretation, then it is for him to establish on the basis of documents and evidence to show that he genuinely had made effort to resolve the doubts that could have arisen

in respect of interpretation of law. Appellant cannot have defence, in his own wrong or misinterpretations. In the present case appellants have made the statement without substantiating the grounds on which they could have entertained the interpretation which they followed. In absence of any evidence to that effect we are not in position to agree with this submission of the Appellants.

Jurisdiction

4.21 Appellants have contested the demand made against the Show Cause Notice dated 23.04.2013 on the ground of jurisdiction. We find that this is not a show cause notice in terms of Section 73 (1) of the Finance Act, 1994, but is simply a statement of demand made in terms of Section 73 (1A). Section 73 (1A) inserted in Finance Act, 1994 by Finance Act, 2012 reads as follows:

"(1A) Notwithstanding anything contained in sub-section (1) except the period of thirty months of serving the notice for recovery of service tax), the Central Excise Officer may serve, subsequent to any notice or notices served under that sub-section, a statement, containing the details of service tax not levied or paid or short levied or short paid or erroneously refunded for the subsequent period, on the person chargeable to service tax, then, service of such statement shall be deemed to be service of notice on such person, subject to the condition that the grounds relied upon for the subsequent period are same as are mentioned in the earlier notices."

Thus in cases of statement of demands issued in terms of this sub section, the jurisdiction will immediately at the time of issuance itself be vested with the officer adjudicating the earlier show cause notices. There may not be any need to confirm separate jurisdiction in respect of such a statement of demand, because as per the provision in terms of which such statement of demand is issued makes it part of the Show Cause Notice issued earlier. However since the matter is going back to the Commissioner on remand he should resolve any jurisdictional issues which may be there and then proceed to adjudicate this statement of demand.

Natural Justice

4.22 We are also in agreement with the submissions made by the appellants that in respect of the last two show cause notice no effective opportunity for personal hearing has been provided. The letter fixing the date of personal hearing do not mention the show cause notice dated 23.04.2012 and statement of demand dated 23.03.2013. Natural Justice is back bone of modern judicial system and it is bounden duty of the adjudicator to not only follow the principles of natural justice but show that he is following the said principles. Hence in respect of these the matter could be remanded back on this preliminary ground itself.

CENVAT Credit

4.22 Appellants have contested the demand of CENVAT Credit made from them in respect of the credit erroneously taken by them on the documents which were not in their name. Their ground of contest is

simple that they have already reversed the said amounts taken in their CENVAT account without utilizing them. If the demand is made again it will amount to recovery of wrongly taken CENVAT Credit twice. We are in agreement with the submissions made by the appellant subject to verification of the reversal made by them of the CENVAT Credit now being demanded from them. Commissioner should in remand proceedings cause a verification of the same and record a proper finding.

Interest

4.23 Since the demand of tax has been upheld the demand for interest will follow. It is now settled law that interest under Section 75, is for delay in the payment of tax from the date when it was due. Since appellants have failed to pay the said Service Tax by the due date interest demanded cannot be faulted. In view of the decisions as follows:-

- ➢ P V Vikhe Patil SSK [2007 (215) ELT 23 (Bom)]
- ➢Kanhai Ram Thakedar [2005 (185) ELT 3 (SC)]
- ➢TCP Limited [2006 (1) STR 134 (T-Ahd)]
- ➢ Pepsi Cola Marketing Co [2007 (8) STR 246 (T-Ahd)]
- ➢ Ballarpur Industries Limited [2007 (5) STR 197 (T-Mum)]

Penalty

4.24 Since matter is being remitted back to the commissioner for redetermination of the quantum of demand, the amount of penalty are to be redetermined in accordance with the duty demand confirmed in remand proceedings.

5.1 In view of the discussions as above appeals are allowed, setting aside the impugned order and the matter is remanded back to the adjudicating authority for consideration of the show cause notices in accordance with the observations made in this order. Since matter is pertaining to demand notices issued from the year 2009 onwards, in de novo proceedings Commissioner should adjudicate the matter within six months of receipt of this order, after following the principles of natural justice. Appellants should also provide all information as required by the Commissioner for making fresh determination.

(Pronounced on 29/05/2020)

(S.S.GARG)
MEMBER (JUDICIAL)

(SANJIV SRIVASTAVA)
MEMBER (TECHNICAL)

SS