CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHANDIGARH

REGIONAL BENCH - COURT NO. I

Service Tax Appeal No. 2244 of 2012

[Arising out of Order-in-Original No. 67/ST/CHD-II/2012 dated 30.04.2012 passed by the Commissioner of Central Excise & Service Tax, Chandigarh-II)

M/s Confederation Of Indian Industry **……Appellant**
Northern Region, Sector-31-A, Chandigarh-160030

VERSUS

Commissioner of Central Excise & Service Tax, Chandigarh-I **……Respondent**
Central Excise House, F-Block, Rishi Nagar, Ludhiana 141001

APPEARANCE:

Present for the Appellant: Shri Rajesh Kumar, Advocate

Present for the Respondent: Ms. Shivani, Authorized Representative

CORAM: HON'BLE MR. S. S. GARG, MEMBER (JUDICIAL)
HON'BLE MR. P. ANJANI KUMAR, MEMBER (TECHNICAL)

FINAL ORDER NO. 60172/2023

DATE OF HEARING: 03.03.2023
DATE OF DECISION:28.06 .2023

PER S. S. GARG

The present appeal is directed against the impugned order dated 30.04.2012 passed by the Commissioner of Central Excise and Service Tax, Chandigarh whereby the Ld. Commissioner has confirmed the demand of service tax of Rs. 2,30,78,277/- under Section 73(1) of the Finance Act along with interest under Section 75 of the Finance Act and also imposed equal penalty under Section 78 of the Finance Act. The Commissioner has also imposed penalty of Rs. 5000/- under Section 77 of the Finance Act.

2. Briefly the facts of the case are that the appellant are engaged in providing Mandap Keeper Services, exhibition Services, Management consultancy Services, Sponsorship Services, club or Association Services, Advertising Services & Convention Services specified under section 65(105) of the Finance Act, 1994 (hereinafter referred to as the Act). The appellant opted for centralized Registration being a Northern Region Head Quarter and the permission was granted for the same by the Commissioner on 24.02.2005 for the Mandap Keeper Service, Exhibition Services & Management Consultancy services etc. Further after addition of few more new services, the Centralized registration was granted by the Commissioner on 16.12.2008.

3. During the course of audit it was observed that the appellant was providing the services under the category of convention services but had started paying service tax on the same from 16.05.2008 only whereas the service tax on the said services was leviable from 16.07.2001.

4. The appellant started paying service tax from 16.05.2008 only when the words 'client' was substituted with 'any person'. The appellant was providing this service to various firms/companies engaged in the manufacturing activities or providing services on payment of duty/taxes. Any person who was sponsored by such firms or the representative of the firm or any person who required any specific expertise/advice relating to the subject matter of that convention were the participants of such conventions. Thus, the appellant was required to pay service tax on convention services from 18.04.06 onwards when from the definition the words 'commercial

concern' was substituted with 'any person' but the appellant started paying service tax from 16.05.2008. As per the department, the appellant was liable to pay service tax of Rs. 91,79,716/- on the convention services provided by them for the period 18.04.2006 to 15.05.2008 which appeared to be recoverable along with interest. Further, the appellant had shown the convention service income of Rs. 67,38,642/- and 23,43,564/- under management Consultancy services & Business Exhibition Services respectively on which service tax of Rs. 8,29,296/- & 2,86,852/- respectively was not paid. As such the appellant is liable to pay service tax of Rs. 1,02,95,854/- which appeared to be recoverable along with interest.

5. For the period from 16.05.2008 onwards under the head of convention services, the appellant had paid service tax on the delegation fee received from delegates attending the Seminar/conference/Convention. On reconciliation of figures as reflected in the balance sheet, it was observed by the audit that there was a difference of Rs. 1,88,35,080/- for the period 16.05.2008 to 31.03.2009 and the service tax involved on differential amount of Rs. 1,88,35,080/- comes to Rs. 22,70,068/- as on 31.03.2009. Further the appellant intimated vide their letter dated 27.09.2010 that they had received an amount of Rs. 9,98,67,855/- under Modular Employment Scheme during the period 2009-10 and 2010-11 (upto August 2010). Out of Rs. 9,98,67,855/- they had paid service tax on an amount of Rs. 1,21,11,697/- and they had not paid service tax on an amount of Rs. 8,77,56,158/- during the period 2009-10 and 2010-11 (upto August 2010). As such the appellant had not paid service tax on the total differential amount of Rs. 10,65,91,238/- to the tune

of Rs. 1,13,06,384/- which appeared to be recoverable from them along with interest. Further, during audit it was observed that the appellant was providing service under Business Exhibition Services and on reconciliation of figures as reflected in ST-3 returns and as shown in the balance sheets for the year 2005-06 to 2008-09, difference of Rs. 2,43,17,676/- was found. As per the balance sheet the appellant had shown the receipt of Rs. 15,18,93,982/- and as per ST-3 returns they had shown the assessable value as Rs. 12,75,76,306/-. The service tax on differential amount of Rs. 2,43,17,676/- come to Rs. 27,76,582/- which appeared to be recoverable along with interest from the appellant.

6. Apart from the above, the appellant also received the payment during the period from 2005-06 to 2010-11 as detailed below:

(i) Reimbursement of electricity charges:	22,69,072/-
(ii) Sponsorship Income:	84,20,000/-
(iii) Govt. Grants:	48,43,550/-
(iv) Govt. Grants received during 2009-10 and 2010-11 (upto August, 2010):	33,00,000/-.

7. The appellant had also shown receipt of Rs. 22,69,072/- on account of reimbursement of electricity consumption charges but had not paid service tax on these charges on the plea that it was only reimbursement of charges of electricity consumption and they had not shown the same in their invoices also. But they had paid service tax on the gross amount from the exhibitors, which also included in the electricity charge. On being pointed out the appellant agreed to pay service tax of Rs. 1158/- along with interest on electricity

charges shown on bills on which no service tax was paid. The appellant had deposited the same along with interest of Rs. 439/- vide GAR-7 no. 00277 dated 09.11.2009. The service tax on such charges appeared to be recoverable on the gross amount charged to the exhibitor by the appellant and was taxable under Section 55(105)(zzo) of the Finance Act.

8. As regards the payment of service tax on sponsorship the appellant submitted that the liability of payment of service tax of sponsorship services was of the party which was giving sponsorship and not of the recipient of the sponsorship. As per the figures provided by the appellant an amount of Rs. 84,00,000/- in the year 2006-07 and 2007-08 had been received by the appellant towards sponsorship as per Rule 02(d)(vii) inserted with effect from 01.05.2006 in the case of sponsorship service provided to a body corporate or firm located in India, the body corporate or firm receiving such sponsorship would be liable to pay service tax. Further, the appellant had not paid the service tax on government grants amounting 48,43,550/- received during the period 2005-06 to 2008-09, on the ground that this amount had been collected as contribution from various government departments. This amount was shown in the balance sheet under the head income and formed the part of taxable value in providing such services. The appellant vide their letter dated 27.07.2010 intimated that they had received 33,00,000/- during the period 2009-10 and 2010-11. On account of grants from Central or State Government under business exhibition services, this amount formed part of the taxable value under business exhibition services and due service tax appeared to be recoverable

from the appellant along with interest. The appellant appeared to have the short paid service tax amounting to Rs. 21,89,006/- on the value of 1,88,32,622/-. On account of non inclusive of reimbursement of electric consumption, sponsorship fee and government grants in business exhibition services and service tax amounting to Rs. 21,89,006/- which appeared to be recoverable from the appellant along with interest. Further, during the course of audit, it was observe that the appellant was holding annual regional meetings and for the year 2006-07 to 2008-09 the appellant had received an amount of Rs. 40,88,606/- as these regional meetings were held for specific purpose and the entry was restricted to members only and also contribution from the members was being taken thus the same was covered under the convention services and the appellant appeared to be liable to pay service tax on such conventions. As such the appellant appeared to have short paid service tax of Rs. 6,23,871/- which is recoverable along with interest from them.

9. The appellant filed detailed reply to the show cause notice, thereafter, by following the due process Commissioner passed the impugned order dated 30.04.2012 confirming the demand under various heads against which the appellant filed this appeal.

10. Heard both the parties and perused the material records.

11. Ld. Counsel for the appellant submitted that the impugned order is not sustainable in law as the same has been passed without properly appreciating the facts and the law. He further submitted that the appellant organizes various types of conventions/work shops. Members of the public participant in the convention, seminars and

workshop and they pay participation fee. The demand of service tax is on this participation fee. He referred to the definition of convention services as defined in Section 65(105)(zc) which is as follows:

" (zc) to a client, by any person in relation to holding of a convention, in any manner;"

Convention has been defined in Section 65(32) of the Finance Act, as

"(32) "convention" means a formal meeting or assembly which is not open to the general public, but does not include a meeting or assembly, the principal purpose of which is to provide any type of amusement, entertainment or recreation;"

-the Service is taxable only when service is provided to some person "in relation to holding of a convention". The services are in the nature of providing space, equipment etc. To person organizing the convention. CBEC explained the ambit of service vide letter F.No.B. 11/1/2001-TRU, Government of India, Ministry of Finance, Department of Revenue, New Delhi, dated the 9th July, 2001; Annexure-III. The issue has further been clarified vide CBEC circular no. 51/13/2002, dated 07.01.2003 [F.No. 178/2002-CX.4]."

12. He further submitted that the convention service is taxable only when the services are provided to some person in relation to holding of a convention. CBEC explained the ambit of service vide letter F.No.B. 11/1/2001-TRU dated 09.07.2001. The issue has further been clarified by CBEC circular No. 51/13/2002, dated 07.01.2003. He further submitted that it is clear from the notice itself that they had not provided any services to any person in relation to holding a convention. They hold convention on their own. When they had not provided any service in relation to holding a convention to any person hence the demand is not sustainable. He also submitted that the convention organized by them is open to general public and any person interested in the subject matter of the convention can participate in the convention by paying a delegate fee. Once, the convention is open to general public, it is not a convention within the

meaning of convention under service tax law and no demand can be raised on convention service.

13. With regard to annual general meetings, it is submitted that the members meet in the annual meetings to discuss various issues relating to organization and the accounts. But, this meeting is not open to general public. However, the meeting was organized by CII for itself and members pay their contribution. The said activity is squarely covered by the principle of mutuality as approved by the Supreme Court in the case of ***State Vs. West Bengal Vs. Calcutta Club Limited reported in 2019 (29) G.S.T.L. 545 (S.C.)]***

14. As regards the demand based on balance sheet, Ld. Counsel submitted that prior to 2011 service tax was discharged on cash receipt basis whereas balance sheet was made on mercantile/accrual basis and thus there shall always be difference between ST-3 and balance sheet figures. He further submitted that the figures in the balance sheet reflects the income and expenditure of the organization and has nothing to do with liability or payment of service tax. The service tax is paid on specific heading, bases on invoice and not on the gross amount. The demand of the department is bases solely on the gross figure available without any supporting evidence and hence is vague and liable to be dropped. For this submission, he relied upon the decision in the case of ***Karan Textile Industries Vs. Commissioner of C. Ex. Surat [2008 E.L.T. 863 (Tri.- Ahmd.).***

15. With regard to the demand of service tax on reimbursement of electricity expenses. Ld. Counsel submitted that the appellant provides business exhibition service and appropriate amount of

service tax is paid on the said activity. The appellant also charges reimbursement of electricity charges from the exhibitors. Service tax is being demanded on this reimbursement amount which is contrary to what has been held by the Delhi High Court in the case ***of Inter Continental Vs. Union of India reported in 2013 (29) S.T.R. Delhi.*** And the said judgment has been affirmed by the Supreme Court reported in 2018 (10) GSTL 401. In view of this, there cannot be any demand of service tax on reimbursement.

16. Ld. Counsel further submitted that the show cause notice raised demand of service tax without specifying the head under which tax is being demanded. The mere reading of the show cause notice shows that the demand has been raised in cavalier manner, without relying upon any document. Such show cause notice are impossible to reply as the assessee does not know the exact charge. He referred to the judgment of the Supreme Court in the case of ***CCE Vs. Brindavan Beverages reported in 2007 (213) E.L.T. 487 (S.C.)*** wherein the Hon'ble Apex Court in para 10 as observed as under:-

"The show cause notice is the foundation on which the department has to build up its case. If the allegations in the show cause notice are not specific and are on the contrary vague, lack details and/or unintelligible that is sufficient to hold that the notice was not given proper opportunity to meet the allegations indicated in the show cause notice."

17. Further the Ld. Counsel submitted that the demand is barred by limitation as the appellant had a bonafide belief that they are not liable to pay service tax and further the department was aware of the working of the appellant and after due investigation issued a notice allegedly for suppression just a year back. Further, the issue involves interpretation of legal provision particularly taxability of activities and hence extended period of limitation is not invokable. Further, all the

demands has been raised on figures declared by the appellant in invoices, balance sheets, duly audited and submitted to various authorities. In such a situation extended period of limitation is not invokable, held in the following cases:

1. ***CST Vs. Kamal Lalwani [2017 (49) S.T.R. 552 (Tri.-Del.)]***
2. ***Indian Hotels Company Limited Vs. Commissioner [2016 (41) S.T.R. 913 (Tri.-Mumbai]***
3. ***Compark Service Private Limited Vs. Commissioner [2019 (24) G.S.T.L. 634 (Tri.-All.)]***

18. He further submitted that the penalties is not leviable without establishing ingredients of the proviso of section 73. Further, the assessee has acted on bonafide belief that the service tax is not payable.

19. On the other hand, Ld. DR reiterated the findings of the impugned order.

20. We have heard the rival contention of both the parties and carefully gone through the material on record.

21. Firstly, we take up the demand of service tax on "Convention Service" for the period 18.04.2006 to 15.05.2008. The case set-up by the Revenue is that the appellant is providing "Convention Service" as defined under Section 65 (105) (zc) readwith Section 65 (32) of the Finance Act, 1994 whereas the stand of the appellant is that they do not provide any service to any person "in relation to holding of a convention'. It is the finding of the Ld. Commissioner that the appellant organizes various types of conventions/workshops. Members of the public participate in the conventions, seminars and workshops and they pay a participation fee which is subject to service tax under the category of Convention Service.

22. Before we give any findings on this issue, it is pertinent to examine the definition of convention and convention service during the relevant period which is reproduced herein below:-

(a) That the Convention defined under Section 65(32) of the Finance Act, 1994 is as under;-

"Convention" means a formal meeting or assembly which is not open to general public, but does not include a meeting or assembly, the principal purpose of which is to provide any type of amusement, entertainment or recreation.

(b) Further during the impugned period, the taxable service in respect of convention had been defined in section 65(105) (zc) of the Act as under;-

"Service" means any service provided or to be provided to a client by any person in relation to holding of convention in any manner.

When we examine the definition and scope of convention and convention service provided in the Finance Act, 1994 cited (supra) then it is clear that the convention service is taxable only when it is provided to some person "in relation to holding of a convention". Wherein in the present case, we find that the appellant do not provide any service to any person in relation to the holding of a convention. Further the scope of convention service has been clarified by CBEC vide letter F.No.B.11/1/2001-TRU dated 09.07.2001 Government of India, Ministry of Finance, Department of Revenue. The issue has further been clarified vide CBEC Circular No. 51/13/2002 dated 07.01.2003.

The relevant portion of TRU Letter dated 09.07.2001 is reproduced herein below:-

2. Any service provided for holding a conference, seminar, meetings etc by a commercial concern will come under the tax net. The service could be in the nature of providing of room/ hall for the convention. The services could also include providing other facilities such as video conferencing, equipment such as over head projectors, video-roma (LCD projector), speakers, microphones, technical staff for operating these equipments and stationery, etc apart from providing space for holding a convention. The charges for such facilities shall also be included in the value of taxable service. In some cases it may appear that it is same as the service rendered by a "mandap keeper". Apart from the fact that there is a subtle distinction between the type of events (official, social or business function in the case of mandap keeper as opposed to formal meeting in the case of convention services) it is clarified that the intention is not to charge the service tax twice on the same service. If a service provider is already registered as a mandap keeper and paying service tax, he is not liable to pay service tax again under the category of convention services. Similarly, a convention service is not liable to tax as mandap keeper service also.

23. In view of the above, we are of the considered opinion that during the relevant period, the appellant cannot be termed to be a commercial concern so as to make them liable to pay service tax for providing a necessary infrastructure for conduct of the conventions. By no stretch of imagination, the appellant can be termed as a commercial concern as they are a body of the industry formed as a trust to protect the interest of industry. Therefore, notwithstanding the fact that they are collecting certain sums for providing the infrastructure for holding conventions, they cannot be termed as a commercial concern to be liable to pay service tax for this activity. Moreover, we find that the conventions organized by the appellant is open to general public and any person interested in the subject matter of the convention can participate in the convention by paying a 'delegate fee'. Once the convention is open to general public, then it is not a convention within the meaning of 'Convention' under service tax law and consequently no demand of service tax can be raised on convention service.

24. As far as the demand of service tax of Rs. 6,23,871/- on annual general meeting under convention service, we find that this demand is not sustainable as the annual general meeting is organized for the members themselves as it is a members organization and the members meet in annual general meeting to discuss various issues relating to the organization and accounts etc. However, this meeting is not open to general public. This activity is squarely covered by the principle of mutuality as approved by the Hon'ble Apex Court in the case of ***State of West Bengal vs. Calcutta Club Ltd. – 2019 (29) GSTL 545 (S.C.).***

25. As far as demand of service tax of Rs. 22,70,068/- based on differential amount under convention service is concerned, we are of the opinion that this demand is also not sustainable as the figures in the balance sheet reflects the income and expenditure of the organization and has nothing to do with the liability or payment of service tax. Service tax is paid on specific heading, based on invoices and not on the gross amount. The demand of department is solely based on the gross figures available without any supporting evidence and hence is vague and liable to be dropped and we do so accordingly.

26. Further, as far as demand of service tax of Rs. 2,64,582/- on reimbursement of electricity consumption related to business exhibition service is concerned, we find that the appellant provides business exhibition service and admittedly appropriate amount of service tax is paid on that activity. The appellant also charges reimbursement of electricity charges from the exhibitor which is sought to be taxed by the department. In this regard, it is to be noted that the demand of service tax on reimbursement of expenses

has been held ultra virus by the Hon'ble High Court of Delhi in the case of ***Inter-Continental vs. UOI 2013 (29) STR 9 (Del.).***

In view of this, the demand of service tax on reimbursement of electricity charges are set-aside as there is no nexus between electricity reimbursement and service provided.

27. As far as demand of service tax of Rs. 90,36,316/- on Modular Employment Scheme under 'Business Auxiliary Service' pertaining to the period 2009-10 & 2010-2011, we find that the modular employment scheme is a vocational training programme, administered by Ministry of Labour, Government of India. The appellant is approved assessing body of the programme and as per the mandate of the Government, the appellant examine and assess the students enrolled in the scheme.

It is observed that the activity is integral part of vocational training and vocational training activity is outside the ambit of service tax. The assessing activity done by the appellant is part of the vocational training activity exempted vide Notification No. 24/2004-ST dated 10.09.2004 and later exempted from service tax vide Notification No. 23/2010-ST dated 29.04.2010.

28. Further, we find that the show cause notices in this regard clearly failed to provide under which category service tax is demanded on receipt under Modular Employment Scheme. In the absence of any specific category, the demand of service tax is vague and liable to be dropped as observed by the Hon'ble Apex Court in the case of ***CCE vs. Brindavan Beverages (P) Ltd. 2007 (213) ELT 487 (S.C.)*** which is reproduced herein below:-

> "The show cause notice is the foundation on which the department has to build up its case. If the allegations in the show cause notice are not specific and

are on the contrary vague, lack details and/or unintelligible that is sufficient to hold that the noticee was not given proper opportunity to meet the allegations indicated in the show cause notice".

The same view was taken in ***M/s Mahindra and Mahindra vs. CCE 2001 (129) ELT 188.***

29. Similarly, the Hon'ble High Court of Delhi in the case of ***Commissioner of Service Tax vs. ITC Ltd. 2014 (36) STR 481 (S.C.)*** has observed as under:-

> **"14.** The object and purpose of issue of show cause notice is to inform the assessee so that reply or submissions can be made and relevant facts which are in the knowledge of the assessee can be brought on record. After examining and consideration of the show cause notices, we feel that the assessee was informed and made aware of the contention of the revenue and their stand and stance. The specific agreement(s) which were sought to be brought and charged to Service Tax under the head 'Business Auxiliary Services' were stated. No doubt, Tribunal has permitted the appellant-revenue to act in accordance with the law, but, they would not able to proceed in terms of and for the periods specified in the show cause notices, which were the subject matter of the order-in-original dated 29-5-2012.
>
> **17.** When we examine the Show Cause Notice, we have to take into consideration that the object and purpose is to inform the recipient of the allegations against him so that he can meet them effectively and is not prejudiced by manifestly vague notice which leaves him confused and unable to answer/reply. The assessee must be given a reasonable and real opportunity and made aware as to what he has to meet. But, the notice cannot be read as a legislative enactment which is to the point, precise and required to show exceptional lucidity. What is required to be seen is whether the allegations made have been conveyed and set forth, to enable the recipient/assessee to get an opportunity to defend himself against the charges. Notice should not suffer from obscurity and unintelligibility as to deny a fair and adequate chance to the recipient/assessee to get himself fully exonerated and avoid incidence of tax. What transpired after the notice was served, conduct of the parties thereafter, hearing given, are all factors that have to be examined to ascertain as to any prejudice was caused resulting in an arbitrary and unjust decision. Principle of prejudice resulting from vagueness and uncertainty has to be examined in pragmatic and a reasonable manner."

30. Further coming to the submission of the appellant that substantial demand is barred by limitation, we find that in the present case, the appellant-assessee has acted on bonafide belief that they are not liable to pay service tax and the department was aware of the

working of the assessee and the appellant-assessee has been paying service tax wherever they are liable to pay. Further, the entire demand has been raised on the basis of figures declared by the appellant in invoices, balance sheet duly audited and submitted to various authorities and therefore in such situation extended period of limitation is not invokable as held in the following cases:-

(i) CST vs. Kamal Lalwani – 2017 (49) STR 552 (Tri.-Del.)

(ii) Indian Hotels Company Limited vs. Commissioner 2016 (41) STR 913 (Tri.-Mumbai)

31. Further, we find that in this case, extended period of limitation has been invoked without any justified reason because the allegation made in the show cause notice does not specifically mentions as to what fact the assessee was to inform, which was suppressed. In this regard, we rely upon the observation made by the Hon'ble Apex Court in the following cases:-

(i) Padmini Products vs. Collector 1989 (43) ELT 195 9 (SC)

(ii) Uniworth Textile Limited vs. Commissioner 2013 (288) ELT 161 (SC.)

(iii) CCE vs. HMM Limited 1995 (76) ELT 495 9 (SC)

In view of these circumstances, we hold that the substantial demand of service tax is barred by limitation.

32. As far as levy of penalty is concerned, once we hold that the service tax itself is not leviable, the question of imposing penalty does not arise.

33. In view of our discussion above, we hold that the impugned order is not sustainable in law and is liable to be set-aside and we do so accordingly.

34. In result, the appeal is allowed.

(Pronounced on 28.06.2023)

(S. S. GARG)
MEMBER (JUDICIAL)

(P. ANJANI KUMAR)
MEMBER (TECHNICAL)

Kailash