IN THE CUSPTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI, PRINCIPAL BENCH NEW DELHI

Date of Hearing/Decision:22.09.2017

Service Tax Appeal No.55284/2013-DB

[Arising out of Order-in-Original No.163-164/ST/PKJ/CCE/ADJ/2012 dated 09.10.2012 passed by the Commissioner of Central Excise (Adjudication), New Delhi]

Federation of Indian Export Organisation (FIEO) Appellants

Vs.

CST, New Delhi Respondent

Appearance:

Rep. by Shri Rakesh Chitkara, Advocate and Shri M.S. Nimesh, Consultant
Rep. by Shri A.K. Jain, DR for the respondent.

Coram: Hon'ble Shri S. K. Mohanty, Member (Judicial)
Hon'ble Shri B. Ravichandran, Member (Technical)

Final Order No.57037/2017

Per B. Ravichandran:

The appeal is against order dated 9.10.2012 of Commissioner of Central Excise (Adj.), New Delhi.

2. The appellant is a Apex Federation body for promotion and development of exports in the country. The Foreign Trade Policy of the Government mandates that every exporter to become member of appellant organization or any specific export promotion council in order to avail various incentives as per the policy. The appellants collect membership fee from the members. There are various other considerations like subscription, national or international meeting fee, seller meetings' fee etc. They have also shown various income including these above in their accounts. On scrutiny of their accounts, the Revenue entertained a view that

the appellant is liable to service tax on the consideration received by them from their members under tax entry “Club or Association Service” in terms of Section 65(25a) read with sub-clause (zzze) of Clause (105) of Section 65 of Finance Act, 1994. Proceedings initiated against the appellant resulted in the impugned order wherein the Original Authority confirmed the service tax liability of Rs.2,78,01,252/-. The Original Authority also imposed penalties under Section 76, 77 and 78 of the Finance Act, 1994. It was held that the appellants are liable to such service tax under the category of “Club or Association” service for the period 16.06.2005 to 6.7.2009.

3. Ld. Counsel for the appellant contested the findings in the impugned order mainly on the ground that the appellant is a society registered under Society Registration Act, 1965. Their activities are mainly with reference to promotion of export from India. The relationship with the members cannot be considered as that of service provider with service recipient. The body of the appellant was constituted by the members and there is no separate identity for members and the body. Ld. Counsel referring to the principle of “mutuality” submitted that there is no service in the activities of the appellant body as the same is nothing but the composition of members. Hence, there can be tax liability for such activity which is service to the self. He relied on the decision of the Tribunal in the case of **M/s. Federation of Indian Chambers of Commerce and Industry & Ors. – 2015 (5) TMI 183 – CESTAT New Delhi .** Reliance was also placed on the decision of the Tribunal in respect of similarly placed export promotion bodies.

4. Ld.AR reiterating the findings of the Original Authority. He submitted that the decision of the Hon’ble Gujarat High Court in the case of **Sports Club of**

Gujarat Ltd. Vs. Union of India – 2013 (7) TMI 510 (Gujarat) and the decision of the Hon'ble Jharkhand High Court in the case of **Ranchi Club Ltd. Vs. Chief Commissioner of Central Excise & Service Tax – 2012 (6) TMI 636 (Jharkhand)** are under appeal before the Hon'ble Supreme Court in the SLP/appeals.

5. We have heard both the sides and perused the appeal records.

6. We note that the Tribunal in the case of **Federation of Indian Chambers of Commerce and Industry (supra)** examined almost similar set of facts with reference to tax liability of the appellant under the tax entry "Club or Association" service and concluded that the appellants are engaged in activities having objectives which amounts to public service and are of a charitable nature. The Tribunal relying on the decision of the Hon'ble Gujarat High Court in the case of **Sports Club of Gujarat Ltd. (supra)** held that the service provided by the appellant is not authorized for levy and collection of service tax under club or association service as the Hon'ble High Court held the same as constitutionally invalid.

7. We also note that in a separate decision in the case of **Ranchi Club Ltd. (supra)**, the Hon'ble Jharkhand High Court held that in the activities of a club or association involving members there is no two legal persons to consider for tax liability.

8. We note that in the present proceedings, the appellants were put to tax liability only in the category of "Club or Association" service and not under any other categories. Accordingly, the decided case laws relied upon by the appellants

are applicable to the facts of the present case. As such, we find that the impugned order cannot be sustained. The same is set aside. The appeal is allowed.

[order dictated & pronounced in open court]

(S.K. Mohanty)
Member (Judicial)

(B. Ravichandran)
Member (Technical)

Ckp.