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Supreme Court upheld the CESTAT order that no service tax applicable on exhibiting films on revenue sharing basis

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Summary

The Supreme Court (SC) has affirmed the findings of Customs, Excise and Service Tax Appellate Tribunal (CESTAT or Tribunal) that the act of exhibiting cinematographic films on own account is not a provision of service and thus, not leviable to service tax. CESTAT had opined that a revenue-sharing arrangement does not necessarily mean provisioning of service unless a service provider and service recipient relationship is established. The CESTAT observed that the agreement was on a principal-to-principal basis and appellant was not providing any service to producer/distributor.

Facts of the case

- The appellant[1] is engaged in the business of exhibiting cinematographic films across India in theatres. The appellant acquires a licence to exhibit films for which consideration is paid as a percentage of box office collection.
- The department issued two show-cause notices (SCNs) to the appellant demanding service tax on the ground that it was providing infrastructure support services which is a taxable service under BSS[2].
- Placing reliance on certain decisions[3], the appellant contended that revenue-sharing arrangement does not necessarily imply the provision of service until the establishment of a relationship as a service provider and recipient.
- Further, the appellant alleged that the service tax demand shall be set aside as there is no provision of any service to the distributor/producer[4].

Hyderabad CESTAT observations and ruling[5]:

- **Agreement is on principal-to-principal basis:** Under the agreement, the producer has granted non-exclusive rights to appellant to exploit the theatrical rights of films, whereas, the ownership rights, copyrights and other intellectual property rights stand vested with the producer. Thus, the agreement is on principal-to-principal basis as it does not constitute a partnership or agency between parties. Each party is entitled to conduct its business in its absolute and sole discretion.
- **No provision of service:** In a similar case[6], the Tribunal had observed that that the appellant did not provide any service to the distributors. Further, the distributors did not make any payment to the appellant as consideration for the alleged service. If the appellant was providing any service, then it would have received payment for the same. But, contrary to this, the appellant is paying consideration for granting licence.
- **Service Tax cannot be levied:** Placing reliance on circular[7], it was clarified that exhibition of movie provided by

1 Inox Leisure Limited

2 Business Support Services defined in sub-section 104(c) of section 65 of the Finance Act

3 Mormugao Port Trust vs. Commissioner of Customs, Central Excise & Service Tax, Goa- (Vice-Versa); M/s. Old World Hospitality Limited vs. CST, New Delhi; Delhi International Airport P. Ltd. vs. Union of India & Ors.

4 SPE Films

5 Service Tax Appeal No. 30488 of 2016 and Service Tax Appeal No. 30489 of 2016; Final Order No. 30338-30339/2021 dated 20 Oct 2021

6 Division Bench of the Tribunal in Moti Talkies

7 Circular dated 23.02.2009 issued by the Central Board of Excise and Customs

distributor is not a support or assistance activity but is an activity on its own accord. Thus, no service tax can be levied on appellant under BSS.

- **The Commissioner cannot act beyond the scope of SCN:** The demand order was confirmed on the basis that appellant was providing infrastructure support service. Whereas in the SCN, it was alleged that appellant was providing 'operational and administrative assistance'. Hence, the act of going beyond the scope of SCN by the Commissioner is not sustainable.

SC Observations and Ruling[8]

- **Affirmation of CESTAT observations:** It was held that the CESTAT has taken absolutely correct view and there is no reason to interfere with the order passed by the Tribunal.

Our comments

Earlier, it had been held by CESTAT, Allahabad, in case of PVS Multiplex India Pvt Ltd[9], that service tax was not required to be paid on payments made to distributors for screening the films on revenue-sharing basis.

It was also held by the CESTAT Mumbai, in case of Mormugao Port Trust[10], that a contractor-contractee relationship is an essential element of any taxable service that was absent in the relationship among the partners or co-venturers or between the co-venturers and joint venture.

The present SC ruling is in line with the above rulings and it is upheld that the relationship of service provider and recipient is an important aspect to determine the taxability of transactions in revenue-sharing agreements.

This principle may be relevant under the Goods and Services Tax (GST) regime also. It appears that in case the agreements entered are not on principal-to-principal basis, such transactions would be taxable under GST.

The nature of the transaction determines the taxability; hence each case and the decision should be looked at from a case-to-case basis.

8 Civil Appeal No.1335 of 2022, Order dated 28 Feb 2022

9 Appeal No. ST/70563/2016-CU[DB]

10 Appeal No. ST/86337, 86592/15

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