

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
New Delhi

PRINCIPAL BENCH – COURT NO. 3

Service Tax Appeal No. 50606 Of 2021

[Arising out of Order-in-Original No. 02-03/Commr/Del East/PV/2020 dated 06.01.2021 passed by the Commissioner of Central Tax, GST Delhi East]

Confederation of Indian Industry

Mantosh Sondhi Centre, 23, Industrial
Area, Lodhi Road, New Delhi

: Appellant

Vs

Commissioner, CGST, Delhi East

C. R. Building, I.P. Estate, New Delhi-110002

: Respondent

APPEARANCE:

Shri Arun Kumar Singh, Advocate for the Appellant

Shri Aejaz Ahmad, Authorized Representative for the Respondent

CORAM :

HON'BLE MS. BINU TAMTA, MEMBER (JUDICIAL)

HON'BLE MS. HEMAMBIKA R. PRIYA, MEMBER (TECHNICAL)

FINAL ORDER No. 50295/2026

Date of Hearing:05.01.2026

Date of Decision:24.02.2026

HEMAMBIKA R. PRIYA

The present appeal has been filed by M/s Confederation of Indian Industry¹ to assail the Order-in-Original No. 02-03/Commr/Del East/PV/2020 dated 06.01.2021 wherein the Commissioner confirmed the demand of ₹ 1,81,25,408/- + ₹ 47,822/- along with penalties and interest.

2. The brief facts of the case are that the appellant was registered with the Service Tax Department for providing several taxable services. Two show cause notices (i) C. No. DL/ST/AE/Inq/28/2006 dated 17.04.2008 and (ii) C. No. DL-1/ST/R-IV/Adt/113/07 dated

1 the appellant

23.04.2009 were issued to the appellant. The two show cause notices were adjudicated vide Order-in-original No. 53-54/RDN/09 dated 30.11.2009. Aggrieved, an appeal was filed before the CESTAT, which vide Final Order No. ST/A/52985-52986/2016-CU[DB] dated 05.08.2016, remanded the matter with specific instructions. In the remand proceedings, the adjudicating authority confirmed the following demands:-

- (i) Service tax of Rs. 1,81,25,408/- was confirmed on "overseas business exhibition" under "business exhibition service".
- (ii) Short payment of Service tax an amount of Rs. 11,90,389/- [11,42,567/- plus 47,822/-] based on balance sheet figures.
- (iii) Interest of Rs. 1,20,101/- [1,16,411 plus 3,690/-]

Aggrieved by the said order, the appellant has preferred the present appeal.

3. Learned counsel for the appellant submitted as follows:-

3.1 Business Exhibition Service held abroad:

- (i) The appellant is an industry organization.
- (ii) The appellant buys space in those exhibitions for its members to participate in those exhibitions. The appellant receives a payment from such members.
- (iii) The appellant is not organizer of business exhibition and has merely facilitated participation of its members in those business exhibitions. Thus, no demand can be levied as per the definition of business exhibition service. The Adjudicating authority has conspicuously avoided the **Cox & King** judgment, as directed by Tribunal in remand order.

(iv) The transactions was between a mutual organization and its members. Hence, no service tax was payable on the principles of mutuality. This case was remanded on the basis of Tribunal's judgment in case of **FICCI** versus **Commissioner of Service Tax, Delhi**², wherein it was held, in para 24 (b),

"Services provided by the appellants to their respective members and considerations received therefore is not exigible to tax in view of principle of mutuality"

The FICCI case was approved by the Supreme Court in **Calcutta Club Limited**. The activity is squarely covered by the principle of mutuality as approved by Supreme Court in **State of West Bengal** versus **Calcutta Club Limited**³.

(v) Service Tax being destination-based consumption tax, any service provided outside India was not taxable. The principle is accepted in circulars issued by the department and also in the Tribunal's order in the case of **Cox and King India Limited** versus **Commissioner of Service Tax**⁴. The matter was remanded based on this order only on this issue.

3.2 Learned counsel also contended that the demand or Service Tax of Rs. 11,42,567/-and 47,822/- was based on balance sheet prepared on accrual basis, whereas the service tax had been paid on cash basis. He submitted that at the relevant time, service tax was payable on cash receipt basis and not on balance sheet figure which was prepared on mercantile/accrual basis. Prior of 2011, service tax was discharged on cash receipt basis whereas balance sheet was made on

2 [2015 (38) STR 529]
 3 (2019 (29) G.S.T.L. 545 (S.C.)
 4 2014 (35) STR 817

mercantile/accrual basis. Thus, there will always be difference between ST-3 returns and balance sheet figure. Learned counsel also stated that the demand for the period 14.05.2003 to 31.03.2004 for 19,69,783/-, was covered in the notice issued covering period Oct 2003 to March 2004. This show cause notice was adjudicated in favour of the assessee and this fact is recorded in the finding. Once the demand for October 2003-March 2004 had been dropped, the department could not issue another notice for the period prior to October 2003, alleging suppression and confirm the demand invoking extended period of limitation. Learned counsel further submitted that the figures in the balance sheet reflects the income and expenditure of the organisation and has nothing to do with liability or payment of service tax. The demand of the department was solely based on the gross figure available without any supporting evidence. In this regard, the learned counsel relied on the following judgments:

- (a) Karan Textile Industries versus Commissioner of Central Excise, Surat⁵
- (b) Confederation of Indian Industry versus Commissioner of Central Excise and Service Tax, Chandigarh-I⁶

3.4 Learned counsel also contended that the demand was time barred as the appellant had acted on bonafide belief. In this regard, learned counsel relied upon following judgments:

- (i) Padmini Products versus Collector of Central Excise⁷
- (ii) Uniworth Textile Limited versus Commissioner⁸
- (i) Commissioner of Service Tax versus Kamal Lalwani⁹

5 **2008 (232) E.L.T. 863 (Tri. Ahmd.)**
6 **[(2024) 20 Centax 239 (Tri)]**
7 **1989 (43) ELT 195 (SC)**
8 **[2013 (288) E.L.T. 161 (S.C.)]**

Penalty was also not leviable without establishing ingredients of the proviso of Section 73.

4. Learned Authorized Representative for the Department submitted that the appellant had been providing Business Exhibition Services since 10.09.2004, and began paying service tax from January 2006 in respect of domestic exhibitions only but had not paid service tax in respect of income earned in organizing Overseas Trade Fair. In the instant case, payment was received in Indian rupees. Further, both the service provider and the service receiver were located in India and hence service tax was payable on the amounts so received under the head "Business Exhibition Services". Learned Authorized Representative contended that as per Notification No. 21/2003-ST, dated 20.11.2003, Rule 3 of the Export of Services Rules, 2005 and notification No. 28/2005-ST, dated 07.06.2005 applicable w.e.f. 16.06.2005, such services cannot be treated as export of services, as the specified criteria or conditions as mentioned in the said Rules and notifications were not satisfied. He submitted that the main condition to be satisfied is that the payments should have been received in convertible foreign exchange whereas the appellant had received the payment in Indian Rupees from its Indian clients & both service provider, i.e. CII & Service receiver, i.e., member of CII were located in India. Consequently, the flow of service was in India only.

4.1 Learned Authorized Representative further submitted that out of the proposal to demand duty of Rs. 19,69,783/- in the first SCN, the amount confirmed is only to the extent of Rs. 11,42,567/- for the period 14.05.2003 to September 2005. The appellant had failed to

provide details of the amounts received vis-à-vis invoices issued, in the absence of which it was not possible for the adjudicating authority to ascertain the correctness of the Service Tax paid.

5. We have heard the learned counsel for the appellant and the learned Authorized Representative for the Department. The impugned order has been passed consequent to the remand order of this Tribunal, which read as follows:-

"5. Therefore, we allow the appeals by way of remand to the primary adjudicating authority for de novo adjudication in the light of the CESTAT judgements in cases of FICCI versus CST, Delhi (supra) and Cox & Kings (India) Limited versus CST, Delhi and other submissions, if any, to be made by the appellant during personal hearing which should be granted before de-novo adjudication. We make it clear that we have not expressed any opinion on the merits of the case."

6. The issues for consideration before us are as follows:-

(i) Demand of Service Tax amounting to Rs. 1,81,25,408/- on Business exhibition held abroad.

(ii) Demand of Service Tax of Rs. 11,42,567/- and 47,822/- based on balance sheet prepared on accrual basis, whereas service tax was paid on cash basis

(iii) Penalty of Rs. 1,81,25,408/- and Rs. 1000

(i) Business Exhibition Service : The learned counsel for the appellant submitted that they did not organize any business exhibition, but had merely facilitated participation of its members in overseas business exhibitions. In order to appreciate this, we take note of the definition of the said service, Section 65(105)(zzo) of the Finance Act, 1994, defines taxable service as "any service provided or to be provided to an exhibitor by the organizer of a business exhibition in relation to a business exhibition is a taxable service". The key conditions include a distinct organizer-exhibitor relationship.

7. In the instant case, we note that the learned counsel has submitted that the appellant had merely facilitated participation of its members in business exhibitions organised abroad by others. There is no evidence led by the department to controvert this submission of the appellant. Consequently, no organizer-exhibitor relationship is established. Hence, we hold that the appellant is not liable to pay service tax for charging a fee from its own members for facilitating their participation in overseas exhibition. We observe that the appellant is a non-government, not-for-profit, industry-led and industry-managed organisation, with around 9,700 members from the private as well as public sectors including SMEs and MNCs. It also enjoys an indirect membership of over 365,000 enterprises of national and regional sectoral bodies. Being a Confederation of Industry members, the mutuality principle as laid down by the Supreme Court in State of West Bengal versus Calcutta Club comes to play, which emphasised that no distinct service provider receiver relationship exists, in mutual set ups. Consequently, associations such as the appellant render 'self service' to its members. The relevant para of the Apex Court's decision is reproduced herein after:-

"84. We are therefore of the view that the Jharkhand High Court and the Gujarat's High Court are correct in their view of the law in the following Young Men's India Association(supra). We are,so of the view that from 2005 onwards, the Finance Act of 1994 does not purport to levy service tax on members clubs in the incorporated from."

8. In view of the above, we are of the view that this activity does not become eligible to service tax under Business Exhibition Service. Hence the demand is liable to be set aside.

9. We now take up the second issue relating to delayed payment of service tax, we find that it has been contended that the service tax was paid on cash receipt basis where as the Balance Sheet was prepared on accrual basis. In this context, we note that the impugned order has noted that the appellant had failed to provide details of the amounts received vis a vis invoices issued. Consequently, the impugned order has gone ahead and confirmed the said demand. We find that no evidence has been led before us by the appellant to establish that the tax was paid correctly. Therefore, it would be appropriate to remand this issue to the original authority for consider the matter afresh, giving sufficient opportunity to the appellant to submit all relevant records/documents to substantiate their contentions.

10. In view of the above, we set aside the demand on overseas business Exhibition services. Accordingly the penalty on this account is set aside. We remand the matter regarding the demand based on Balance Sheet figures on accrual basis, for reconsideration by the adjudicating authority.

11. The impugned order is set aside and the appeal is partially allowed and partially by way of remand.

(Order pronounced in the open Court on 24.02.2026)

(BINU TAMTA)
MEMBER (JUDICIAL)

(HEMAMBIKA R. PRIYA)
MEMBER (TECHNICAL)