CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
BANGALORE

REGIONAL BENCH - COURT NO. 1

Service Tax Appeal No. 23205 of 2014

(Arising out of Order-in-Original No.MYS-EXCUS-000-COM-04-14-15 dated 24.06.2014 passed by the Commissioner Central Excise, Customs and Service Tax, Mysore.)

M/s. Mysore Race Club Ltd.
Post Box No.11, Race Course Road,
Mysore – 570 010.

Appellant(s)

VERSUS

The Commissioner of Central Excise, Customs and Service Tax
No.S1 ^ S2, Vinaya Marga,
Siddhartha Nagar,
Mysore – 570 011.

Respondent(s)

APPEARANCE:

Mr. Gaurav Jashwant Shah, Chartered Accountant for the Appellant.

Shri Rajashekar B.N.N, Superintendent (AR) for the Respondent.

CORAM: HON'BLE DR. D.M. MISRA, MEMBER (JUDICIAL)
HON'BLE MRS. R. BHAGYA DEVI, MEMBER (TECHNICAL)

FINAL ORDER NO. 20575 /2026

DATE OF HEARING: 02.02.2026

DATE OF DECISION: 29.04.2026

PER: R. BHAGYA DEVI

This appeal before us is filed by the appellant M/s. Mysore Race Club Ltd. against the Order-in-Original No.MYS-EXCUS-000-COM-04-14-15 dated 24.06.2014 passed by the Commissioner of Central Excise, Customs and Service Tax Mysore.

2. The issues that have been raised in the impugned order are regarding whether the appellant has provided taxable services which are classifiable under the categories of Commercial Use or Exploitation of Event, Renting of immovable Property, Club or Association, Restaurant and Sponsorship services for the period from 01.04.2008 to 30.06.2012.

3. Heard both sides and perused the regards.

4. At the outset, we find the demand against 'Club or Association' services cannot be sustained as it is settled law that the appellant is not liable to service tax for the reason that the services rendered to themselves cannot be considered as a service for a consideration as is held by the Supreme Court in the case **State of West Bengal vs. Calcutta Club Limited: 2019 (29) G.S.T.L. 545 (S.C.)**, therefore the demand to this extent stands set aside.

5. Coming to the services rendered under the category of 'Commercial Use or Exploitation of Event', the Commissioner in the impugned order observed that the definition does not limit or restrict taxability to only grant of rights for telecast and the appellant having transmitted the racing events to other clubs permitting the other racing clubs to view such racing events for commercial purposes, it is to be considered as service and is liable to service tax. From the documents placed on record, we find that the appellant receives amounts for downlinking charges and share of income from other clubs and these downlinking charges are the receipts from other clubs towards live transmission of the events organised by the appellant in his club premises. It is also stated that these downlinking charges are for a single activity of permitting the event organised by them to be used commercially by the other clubs and accordingly, the downlinking charges were held to be liable to service tax under

the category of 'Commercial Use or Exploitation of Event' services as per section 65 (105) (zzzzr) Of the Finance Act 1994.

5.1 The Learned Counsel challenges the demand on the ground that the amount was received for betting which is a subject matter of state levy and hence, the question of service tax liability does not arise. It is also argued that the appellant receives a share of betting revenue from other clubs when they telecast the appellants races and vice-versa; also when the races of other clubs are telecasted in the appellants club. It is stated that this is a mutual reciprocal arrangement among race clubs under Turf Authorities of India and not a commercial service transaction. It is further stated that the betting revenue is subject to betting tax under the respective State Laws and referring to the Circular No.334/2010-TRU dated 26.02.2010, it is submitted that circular clarifies that in the case of commercial exploitations, after the rights are given, it results in provision of another taxable service such as broadcasting service or programme production services. Since in the present case, sharing of the telecast of the race does not result in any further taxable service, the arrangement which is based on Turf Authorities Agreement cannot be subjected to service tax. Also referring to the Circular No.109/2009 dated 23.02.2009, it is submitted that it is a case of sharing of revenue and such sharing of revenue is not liable to service tax.

5.2 We find that as per Section 65(105)(zzzzr) of the Finance Act 1994 'Commercial Use or Exploitation of Event' services means:

> "any service provided or to be provided to any person by any other person by granting the right or permitting commercial use or exploitation of any event including an event relating to art, entertainment, business, sports or marriage organised by such other person."

5.3 It is not in dispute that the appellant had shared the telecast rights to other race clubs and for these rights, charges were collected in terms of downlinking charges, it is also a fact that any person wishing to watch the live telecast of the races had to be physically present inside any of the race clubs and to gain access to the telecast has to enter the clubs by paying the requisite entry free. Therefore, the receipt from downlinking centre collected as downlinking charges for the sole purpose of downlinking charges is liable to service tax under the above category of service since sharing of the telecast rights is nothing but permitting the event organised by them to be used commercially by other clubs and the consideration receipt for the centre activity is liable to service tax. Accordingly, we sustain the demand of service tax under this category.

5.4 In the case of **Royal Western India Turf Club Ltd. vs. Commercial Service Tax, Mumbai: 2015 (38) S.T.R. 811 (Tri. - Mumbai)** dated 22.05.2012, wherein it is observed as:

> "5.4 The appellant herein is involved in conducting the event of "horse racing". The appellant has permitted other race clubs to commercially use or exploit this event. The appellant receives a royalty from these race clubs towards this right to commercial use or exploitation. Thus the activity undertaken by the appellant merits classification under the taxable category of "services of permitting commercial use or exploitation of any event organized by a person or organization" which was brought under the tax net with effect from 1-7-2010. It is only from this date, the Service Tax liability is attracted on this activity. In the instant case as the Service Tax demand is for the period 1-4-2007 to 31-3-2009, they will not be liable to Service Tax during this period."

5.5 The services rendered under the category of 'Commercial Use or Exploitation of Events' was brought under the service tax net only with effect from 1.7.2010. In the instant case, the Service Tax demand is for the period 01.07.2010 to 30.06.2012,

hence, the confirmation of service tax demand under the category of 'Commercial use or Exploitation of Events' is upheld

6. The second issue is with regard to 'Renting of Immovable Property services. The appellant provides space to the bookmakers to operate within the premises of the club for a consideration termed as bookmakers stall fee. It is alleged by the Revenue that for the space provided by the appellant in their premises to bookmakers against a fee amounts to 'renting of immovable property' since the bookmakers use this space for their commercial activity. It is the contention of the appellant that these bookmakers organise the racing events by keeping track of the bettings and they are in the premises as per the Mysore Betting Tax Act and Rules thereof. There is no dispute that the bookmakers have to abide by the Mysore Betting Tax Act and Rules in force issued by the Government of Karnataka and as such, they obtain a licence to operate in the respective clubs. For undertaking their operations, they require a space and that space is provided by the appellant and in terms of this Betting Tax Act and Rules for which payment is received is not based on the area of the premises but based on the race being conducted; therefore, the payment received by the appellant cannot be considered as 'Renting of Immovable Property' as defined under Section 65(90a) of the Finance Act, 1994.

7. The third issue is regarding 'Restaurant' services and the allegation of the department is that there is an airconditioned food court in their premises for the benefit of the members, where food and beverages including alcohol is served and as per the definition of 'Restaurant Services' as defined under Section 65(105)(zzzv) of the Finance Act,1994, the appellant is liable to pay service tax. Accordingly, the service tax demand for the period from 01.05.2011 to 30.06.2012 is confirmed under the

category of 'Restaurant' services. The Learned Counsel counters it on the ground that it is meant only for the Members of the club; hence, not liable to service tax in view of the judgment of the Hon'ble High Court of Kerala in the case of **Kerala Classified Hotels and Resorts Association vs. Union of India: 2013 (31) STR 257 (Ker.)**. We find this decision has been disapproved by the Hon'ble High Court of Karnataka in the case of **Ballal Auto Agency Versus Union of India 2015 (40) S.T.R. 51 (Kar.)** dated 3-11-2014 wherein the Hon'ble court observed as follows:

> "31. Thus, a tax on the sale of purchase of goods and tax on service are two distinct aspects. Tax on sale or purchase of goods is envisaged under Entry 54 of List II (Sales Tax) and the taxable event therein is transfer of property in goods or any of the nature of transactions stipulated in Article 366(29A)(a) to (f). Sales Tax can be levied by the State Government and the State Legislature is competent to enact law with regard to levy of Sales Tax. When State Government imposes tax on sale of goods, it does not do so on the service aspect of the sale. Thus, Service tax is not levied on the transaction when sale of goods occurs. Service tax can however be levied on the said transaction by the Parliament, which is competent to enact a law imposing Service tax. Hence, in the instant case, by virtue of the insertions of sub-clauses (zzzzv) and (zzzzw) to Clause (105) of Section 65 of the Finance Act, 1994, the Parliament intends to levy Service tax on those transactions relatable to service aspect and not on the aspect of sale of goods, which the Parliament is competent to do so. Therefore, there is no merit in the submission of the petitioners with regard to the competency of the Parliament to levy Service tax on the transactions referred to in the above sub-clauses.
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> 32. In fact, a learned Single Judge of this Court in the case of *Confederation of Real Estate Developers' Association of India (Karnataka) and Another* v. *Union of India,* (through Joint Secretary, Ministry of Law and Justice Bhavan and Others) reported in ILR 2013 Karnataka 569 = 2015 (37) S.T.R. 211 (Kar.), while considering sub-clauses (zzq) & (zzzh) and sub-clause (zzzzu) of Clause (105) of Section 65 of the Finance Act,

1994, has held that Parliament had the legislative competence to impose Service tax on those transactions which are relatable to service rendered during the course of sale of land and buildings which is distinct from the tax that is levied on the construction of flats end buildings which is a works contract. The reasoning given by the learned Single Judge, by analogy, is applicable to the present case. The aforesaid case deals with Article 366(29A)(b) of the Constitution which, according to the Hon'ble Supreme Court in *BSNL* is on par with sub-clause (f) of that Article, with which this instant case is concerned with.

33**.** In view of the aforesaid detailed discussion, I am inclined to follow the view of the Bombay High Court which has rightly held that the Parliament had the legislative competence to levy Service tax on sub-clauses (zzzzv) and (zzzzw) of clause (105) of Section 65 of the Act. With respect, I hold that the reasoning of the Kerala High Court is not correct."

In view of the above ruling of the Jurisdictional High Court, we are inclined to hold that the services rendered by the appellant are covered under the category of 'Restaurant Services'; hence, the demand under this category is upheld.

8. With regard to 'Sponsorship Service', it is alleged that since the appellant sponsored sports events, the same is liable to service tax. The appellant does not dispute the fact that these events are sponsored by them but plead *bona fide* belief that they were unaware of the fact that under reverse charge mechanism they were liable to pay service tax; however, claimed the benefit of Notification No.6/2005 dated 1.3.2005 (Small Services Provider exemption). Since there is no dispute about having sponsored the sports events, the appellant is liable to service tax as is held by the Commissioner in the impugned order.

9. With regard to limitation, it is submitted that the show-cause notice dated 21.10.2013 was issued demanding service tax amount under various services for the period from

01.07.2010 to 30.06.2012. From the impugned order, we find that there were various correspondences between the department and the appellant with regard to 'Club or Association Services' for the period from 2005 to 2006 onwards. The Commissioner observing that these letters related to Club or Association Services hence it cannot be assumed that the department was aware of the fact that the appellant was into rendering various other services which have been discussed in the impugned order and goes to confirm the demands invoking suppression. We find that since there were correspondences with the department for a long time stating that they were not liable to service tax since they are registered as 'Club or Association service', suppression cannot be alleged against the appellant. Therefore, we do not find any substantial grounds for invoking extended period of limitation. Accordingly based on our discussions above, all demands are confirmed except for the services rendered under the category of 'Club or Association Services' and the above demands are sustained only for the normal period.

Appeal is partially allowed.

(Order pronounced in Open Court on 29.04.2026.)

(D.M. MISRA)
MEMBER (JUDICIAL)

(R. BHAGYA DEVI)
MEMBER (TECHNICAL)

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