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SHAPING A VIBRANT INDIA

Fees received by cricket players from the IPL franchisee does not amount to 'business support service', thereby not leviable to service tax – CESTAT

31 January 2023

Summary

The Customs Excise and Service Tax Appellate Tribunal (CESTAT), Ahmedabad, has set aside the order demanding service tax on the fees paid to cricketers by the Indian Premier League (IPL) franchisee. The Tribunal has held that the fees received by the cricket players from the franchisee, whereby they were employed to play for the respective teams in terms of the contract with IPL seasons, would not come under the purview of 'business support services.' Further, the Tribunal has held that playing cricket is the primary reason for which the IPL was formed, and promotional activities are ancillary to the main purpose, i.e., playing cricket. The Tribunal has also held that there exists an employer-employee relationship between the franchisee and players for which the players are paid remuneration, and as such, the players are not providing any service to the franchisee that is liable to be brought under the tax net.

Facts of the case

- Yusuf Khan M Pathan and Irfan Khan Pathan (hereinafter referred to as appellants) have entered into contracts with the franchisee to play cricket for IPL seasons for which remuneration/fees is paid to them. The appellants wear team clothing that bears the brand names/marks of various sponsors.
- Show cause notices were issued to the appellants, alleging that the fees received by them are liable to service tax under the category of business support services (BSS). Further, the demand was confirmed by the commissioner (appeals), along with interest and penalties.
- The appellants submit that they grant the franchise all rights to use their identities, including films, TV appearances and photographs. The appellants do not claim endorsement of any goods or services of any sponsors in their own names, but it is the franchise that does so.
- The appellants submit that as per the agreement, they are obliged to undertake any promotional activities and grant the franchise all the rights to use their identities. The main activities of the appellants are playing cricket and other rights, i.e., film, television, photography, press conference to its franchisee to make it commercially viable.
- The appellants have viewed that they are employed by the respective franchisees and are not independent service providers. Accordingly, a service provided by an employee for activities undertaken by the employer cannot be considered as a service provided by the employee.

CESTAT, Ahmedabad, observations and ruling (Service Tax Appeal No.127 and 128 of 2012 dated 20 January 2023):

- **Services not provided as an independent individual:** The appellants are not promoting any particular brand, product or service and are not taking part in any business activity. The appellants have to wear the uniforms, as they are team clothing that bear the brand names/marks of various sponsors. Accordingly, it can be inferred that the appellants are not providing any service as independent individuals.
- **Existence of an employer-employee relationship:** On perusal of the relevant clauses of the agreement, the Tribunal observed that the appellants have been prohibited from the commercial usage of the team clothing. Further, the agreement makes it even clearer that the franchisee is engaging players as professional cricketers who shall be employed by the franchisee itself. Accordingly, there exists an employer-employee relationship between the franchisee and the players.
- **Fees received not covered under BSS:** The entry for BSS envisages taxing such activities that are needed for further undertaking business activities almost in the nature of outsourcing of the activities connected to the business. The activities provided by appellants are not specifically covered under BSS.

Our comments

On a similar issue earlier, the Chennai Tribunal had granted relief to various players of the Chennai Super Kings (CSK) IPL team by holding that these players are not liable to pay service tax on the amount received from the franchisee. The Tribunal had held that there existed an employer-employee relationship between the franchise and the players for which the players were paid remuneration and, therefore, there was no service that was liable to be brought under the tax net.

Even the Calcutta High Court, in the case of former Indian cricketer Sourav Ganguly, had held that the petitioner was not providing any service as an independent individual worker and there was an employer-employee relationship rather than an independent worker, contractor or consultant relationship. Therefore, it cannot be said that the petitioner was rendering any service that could be classified as a 'business support service'.

In the case of the KPH Dream Cricket Pvt. Ltd., the Chandigarh Tribunal had held that the fees paid by a cricket team to overseas players for playing cricket and also participating in the promotional events of the IPL were not liable to service tax under business support services, as such promotional activities are ancillary in nature to the main activity of playing cricket. Furthermore, the Supreme Court has issued a notice against an appeal filed by the Revenue against the said order and the final verdict is awaited.

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