CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
SOUTH ZONAL BENCH
CHENNAI

Appeal No.ST/430/2012

[Arising out of Order-in-Original No.51/2012 d. 28.03.2012 passed by Commissioner of Central Excise, Madurai]

Tamilnadu Spinning Mills Association — Appellant

Versus

Commissioner of Central Excise,
Madurai — Respondent

Appearance :

Shri G. Natarajan, Advocate
For the Appellant

Shri A. Cletus, ADC (AR)
For the Respondent

CORAM :

Hon'ble Shri Madhu Mohan Damodhar, Member (Technical)
Hon'ble Shri P. Dinesha, Member (Judicial)

Date of hearing / decision : 12.12.2018

FINAL ORDER No. 43192 / 2018

Per Shri Madhu Mohan Damodhar

The facts of the case are that pursuant to investigation conducted by the officers of the DGECEI, it appeared that appellants were an organization comprising of various textile / spinning mills from all over Tamil Nadu as its members and had been collecting about Rs.10,000/- every year from every member mills and not discharging service tax liability under "Club or Association

Service" (CAS). It also appeared that appellant had collected certain amounts as commission agent under the head "Success Fee" @ 5% despite being covered under 'Business Auxiliary Service' towards carbon trading by facilitating in getting the Carbon Emission Reduction Certificates under the Clean Development Mechanism of the United Nation Framework Convention on Climate change (UNFCC). Department took the view that appellants were required to discharge service tax on the membership fees / membership renewal fees for the period from 2005-06 to 2009-10 under 'Club or Association Service'. Department also took the view that appellants were required to discharge service tax liability of Rs.1,23,58,430/- on the amounts towards carbon credits earned under the category of Business Auxiliary Service (BAS) and Rs.12,66,878/- under the category of 'Club or Association Service'. Accordingly, a show cause notice dt. 1.9.2010 was issued inter alia proposing demand of aforesaid service tax liabilities with interest thereon and also imposition of penalties under various provisions of law. In adjudication, the Commissioner vide impugned order dt. 28.03.2012 confirmed the demands proposed in the SCN with interest thereon and also imposed equal penalties under Section 78 of the Finance Act, 1994. Aggrieved, appellants are before this forum.

2. Today, when the matter came up for hearing, on behalf of the appellants, Ld. Advocate Shri G. Natarajan made oral and written submissions which can be broadly summarized as under :

(i) <u>Demand under CAS.</u>

The demand under CAS has been confirmed on various amounts, such as Admission Fee, Membership Fee, Establishment Expenses, collected by the appellant from its members. As held in the following decisions, based on the

doctrine of mutuality, there is no provision of service by an association to its own members and hence this demand is not at all sustainable.

Ranchi Club Ltd. Vs CCE – 2012 (26) STR 401 Jhar.

Sports Club of Gujarat Vs UOI – 2013 (81) 645 Guj.

Decision of the Chennai Bench of the Hon'ble Tribunal's Final Order No.40366-40385/2018 Dt.06.02.2018.

Further, the appellant also wish to submit that the definition of "club or association" as per Section 65 (25a) of the Finance Act, 1994, the term does not include a "trade union" and the appellant is registered as a "trade union". On this ground, the demands for subsequent period has been set aside by the Commissioner of Central Excise (Appeals), vide OIA No.9/2016.

(ii) Demand under BAS.

The members of the appellant association, are setting up Wind Mills and generate wind power, which enables them to earn "carbon credit" which is tradeable in international market. The appellant had entered into an agreement with M/s.Carbon Assets Services for sale of such Carbon Credits. The relevant agreement in this regard is enclosed. Out of the sale proceeds realised, they retain 5% towards their consideration and remit the balance to their members, to whom such carbon credits belong to. The transaction is purely one of purchase and sale of carbon credits and no service in the nature of BAS has been provided by the appellant. The service is provided by the appellant to its members and rightly classifiable under CAS, as per Section 65A of the Act, since the definition of CAS is more specific than BAS. As already submitted in the context of demand under CAS, this demand is also not sustainable. Once the activity is not

liable to service tax under CAS, the same cannot be subjected to service tax, under any other category of service, as held in the case of Dr.Lal Pathlab Pvt. Ltd. Vs CCE – 2006 (4) STR 527 (Tri-Del.) upheld vide 2007 (8) STR 337 (P & H) The service is provided to M/s.Carbon Assets Services and the consideration is received in foreign exchange and hence would amount to export of service.

iii) Ld. Advocate also submits that for a subsequent period relating to statement of demand dt. 11.02.2014 for the same dispute, Commissioner (Appeals) vide Order-in-Appeal No.09/2016 dt. 27.01.2016 has allowed the appeal of the appellant.

(iv) The demand is also assailed on limitation.

3. On the other hand, Ld. A.R Shri A. Cletus supports the impugned orders.

4. After hearing both sides and going through the facts of the matter, we find that the Ld. Advocate is correct in his assertion that the matter is no longer *res integra* and has been decided in favour of the appellant in a number of Tribunal decisions. This decision has been laid down by the High Court of Jharkhand in the case of *Ranchi Club Ltd*. - 2012 (26) STR 401 (Jhar.) and by the High Court of Gujarat in the case of *Sports Club of Gujarat* - 2013 (81) ELT 645 (Guj.). The Division Bench of CESTAT Chennai in a recent decision, in a batch of cases, vide Final Order No. 40366-40385/2018 dt. 06.02.2018 has followed the ratio laid down by the High Courts of Jharkhand and Gujarat (supra) and held that if a Club provides any service to its members may be in any form, then it is not a service by one to another in the light of decisions as foundational facts of existence of two legal entities in such transactions is missing.

4.2 In the appeal at hand also, it is seen that the appellants were an organization and hence the service provided to its own members cannot come

within the scope of taxable services for the purpose of Finance Act, 1994. The demand of service tax in respect of membership fee, admission fee, establishment expenses, membership renewal fee etc. as also amount retained in connection with service provided by appellants to its members for earning 'carbon credits' will not be liable to service tax. Hence this being so, the ratio laid down by the Hon'ble Jharkhand High Court in *Ranchi Club Ltd*. (supra) and by the High Court of Gujarat in *Sports Club of Gujarat* (supra) as also Division Bench of the CESTAT Chennai in *Cosmopolitan Club & Others* (supra) will apply on all fours to the facts of this appeal also. The impugned order demanding service tax on the aforesaid activities of the appellant cannot then sustain and will require to be set aside, which we hereby do.

5. Appeal is allowed with consequential relief, if any, as per law.

(operative part of the order pronounced in court)

(P. Dinesha)
Member (Judicial)

(Madhu Mohan Damodhar)
Member (Technical)

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