

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE
TRIBUNAL, MUMBAI
REGIONAL BENCH
COURT No. 5**

Service Tax Appeal No. 87428 of 2016

(Arising out of Order-in-Original No. 06/ST-VI-RK/2016-17 dated 30.05.2016
passed by the Commissioner of Service Tax VI, Mumbai)

Bigtree Entetainment Pvt. Ltd.

Ground Floor, Wajeda House,
Gulmohar Cross Road No.7, Juhu Scheme,
Andheri (W), Mumbai 400 049.

Appellant

Vs.

Commissioner of Service Tax VI, Mumbai

1st Floor, Mahavir Jain Vidyalaya,
C.D. Barfiwala Marg, Andheri (W),
Mumbai 400 058.

Respondent

Appearance:

Shri Vishal Agarwal with Shri Ramnath Prabhu, Advocates, for the
Appellant

Shri Suvir Misra, Commissioner, Authorised Representative for the
Respondent

CORAM:

HON'BLE DR. SUVENDU KUMAR PATI, MEMBER (JUDICIAL)

HON'BLE MR. ANIL G. SHAKKARWAR, MEMBER (TECHNICAL)

Date of Hearing: 07.03.2024

Date of Decision: 17.04.2024

FINAL ORDER NO. 85412/2024

PER: ANIL G. SHAKKARWAR

Brief facts of the case are that the appellant is registered with Service Tax and provides various services. One of the services provided by the appellant is making facility to the customers to book online tickets of movies and other shows. For the said purpose, appellant has provided one online ticketing platform under the aegis of www.bookmyshow.com. The said platform has brought together the customers who wish to book tickets for movies and other shows and the cinema halls and event holders who wish to sell their tickets. For providing such a platform, appellant has entered into contracts with movie houses and those who organize various events. For the convenience of payments for booking the shows, payment arrangements are also made. The platform is connected with various banks and

other payment gateways. For providing facility of online booking of shows, appellant collects convenience charges or convenience fee and pays service tax on the said convenience fee. Appellant receives amount towards ticket cost along with convenience fee and remits the ticket cost to the cinema house or event holder as the case may be. It was observed by Revenue that the appellant was offering their online ticket platform to several credit card companies who promote their cards by allowing discounts or free tickets to the customers. When such discounts and free tickets are offered by credit card companies, the difference between the cost of the ticket and the amount collected from the customer against tickets is borne by the card companies. For the purpose of allowing the card companies to extend offers of discount and free tickets, appellant has entered into agreements with various card companies including ICICI Bank. The ultimate customer when uses an eligible bank's credit card for payment or purchase of cinema or other show tickets, the difference between the payment made by customer and payment received by cinema houses is borne by the debit card company and is routed through the appellant and for the said purpose, appellant issues debit notes to the card companies. It appeared to Revenue that such amount which is collected by the appellant by issue of debit notes to card companies is consideration for allowing card companies to promote their business and in the said manner appellant is providing business support service to card companies. Under the above stated appreciation of transaction, it appeared to Revenue that during the period from financial year 2010-11 to financial year 2014-15, appellant collected around Rs.52.78 crores from the card companies and, therefore, appellant was required to pay service tax of Rs.6,33,96,482/- as service tax and the said service tax was demanded from the appellant through a show cause notice dated 15.10.2015. Appellant contested the show cause notice by stating that as per the agreement, appellant was obliged to collect the actual cost of tickets and the same was collected either from the customers or from the card companies and the same was paid to cinema houses. It was also submitted that the agreement was clearly mentioning that the card companies would reimburse the appellant all amounts that were being

availed as offers by customers and it was stated that the appellant has paid the amounts to the cinema houses and did not retain any amount to itself that was paid by card companies. It was stated that since the consideration was nil, the service tax on the said consideration would also be nil. The said argument was not appreciated by Revenue. Through the impugned order, the service tax demand of Rs.6,33,96,482/- was confirmed and equal penalty was imposed. Aggrieved by the said order, appellant is before this Tribunal.

2. Heard the learned counsel for the appellant. Learned counsel for the appellant has submitted that Revenue has alleged that the appellant was providing business support service to the card companies who were providing discounts or free tickets to customers and such customers were also the customers of card companies. Learned counsel has submitted that it was submitted to the original authority in para 4.6 of the reply to the show cause notice that the incentive offered by banks or card companies to customers was collected by the appellant through debit notes and was remitted to cinema owners and there was a contract with the card companies that card companies would reimburse to the appellant all amounts that were being allowed as offers by the said card companies to the customers who were common customers of the appellant and the card companies. He has pointed out that Revenue has not shown any evidence to establish that out of the amount that was borne by the card companies as offers to ultimate customers was not paid to the cinema houses and was retained by the appellant as consideration for providing business support service. He has submitted that in para 2 of the show cause notice dated 15.10.2015, it is stated that the appellant is not raising any invoice to the card companies against the services rendered by the appellant. The show cause notice also mentions that the offers available to the customers was only limited to certain category of card holders of specified banks or card companies and such offers were not available to all the customers. He has also submitted that the show cause notice takes a note of the term of the agreement between the appellant and the card companies that the card companies would

reimburse the appellant all amounts that were being availed as offers by the customers. He has further submitted that it was reflected from the books of account of the appellant that all the amounts that were collected from card companies were paid to the cinema houses and there was no consideration received by the appellant for helping the card companies to promote their business. He has submitted that if there is no consideration, then service is not provided. He has relied on the decision of this Tribunal in the case of CCE vs. Edelweiss Financial Services Ltd. reported at (2023) 5 Centax 57 (Tri.-Bom) affirmed by Hon'ble Supreme Court through its order reported at 2023 (73) GSTL 4 (SC). He has submitted that Hon'ble Supreme Court in their ruling reported at 2023 (73) GSTL 4 (SC) at para 7 has held that if there is no consideration, then there can be no levy of service tax.

3. Heard the learned AR for Revenue. Learned AR has supported the impugned order-in-original.

4. We have carefully gone through the record of the case and submissions made. Through the proceedings we understand that the amounts collected by the appellant from the card companies are treated as consideration for providing business support service by the appellant to the card companies by Revenue. For the said purpose we have examined the contentions of Revenue raised in the said show cause notice upheld by the impugned order. In para 2 of the said show cause notice, we find that Revenue has stated that the appellant was not raising any invoice against the services rendered to the card companies. We also note from the show cause notice that the incentives given by card companies to their own customers were routed through the platform of booking tickets. As per the agreement, card companies were required to reimburse the appellant all the amounts that were being offered by the card companies to their customers through the ticket booking platform. Appellant had entered into agreements with cinema houses for payment of tickets booked through their platform. For booking of tickets through their platform, appellant collected convenience fee and paid service tax on the same. As per the

record, appellant has not retained any amount to itself which was received from card companies and which was intended to be paid to cinema houses. The allegation in the proceedings are that the appellant had provided business support service to card companies. It was admitted in the show cause notice that the appellant was not raising any invoice to the card companies. It is very simple in the accounting standards that unless invoice is raised consideration is not collected. Therefore, it is very clear from the record that the appellant was not receiving any consideration from card companies.

5. In view of the above, by relying on the ruling by Hon'ble Supreme Court in the case of CCE vs. Edelweiss Financial Services Ltd. reported at 2023 (73) GSTL 4 (SC), we hold that the appellant was not providing any service to card companies and, therefore, we set aside the impugned order and allow the appeal.

(Order pronounced in the open court on 17.04.2024)

(Anil G. Shakkarwar)
Member (Technical)

(Dr. Suvendu Kumar Pati)
Member (Judicial)

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