

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
ALLAHABAD**

REGIONAL BENCH - COURT NO.I

Service Tax Appeal No.70547 of 2017

(Arising out of Order-in-Original No.30/Commissioner/ST/Noida/2016-17 dated 31.03.2017 passed by Commissioner of Service Tax, Noida)

M/s Jaypee Sports International Ltd.,Appellant

(Registered Office : Sector-128, Noida-201304)

VERSUS

Commissioner of Central Excise

& CGST, Noida

....Respondent

(C-56/42, Sector-62, Noida-201307)

APPEARANCE:

Shri Nishant Mishra, Advocate for the Appellant

Shri Sarweshwar T. Khairnar, Authorized Representative for the Respondent

**CORAM: HON'BLE MR. P.K. CHOUDHARY, MEMBER (JUDICIAL)
HON'BLE MR. SANJIV SRIVASTAVA, MEMBER (TECHNICAL)**

FINAL ORDER NO.- 70060/2024

DATE OF HEARING : 08 November, 2023

DATE OF DECISION : 13 February, 2024

P. K. CHOUDHARY:

The present appeal is directed against the Order-in-Original No.30/Commissioner/ST/Noida/2016-17 dated 31.03.2017 passed by the Ld. Commissioner, Service Tax, Noida, by which the transaction between M/s Jaypee Sports International Ltd. and Formula One World Championship Ltd. under the Race Promotion Contract dated 13.09.2011 has been held to be a 'Franchise Service', liable to service tax under Section 66A of the Finance Act, 1994. The services provided by Formula One Management Ltd. to M/s Jaypee Sports International Ltd. are also held to be 'Business Auxiliary Service' and since such services were provided from outside India, hence demand of service tax has also been confirmed on such services.

2. The facts of the case in brief are that M/s Jaypee Sports International Ltd. (**'JSIL'**) was the owner of a motor racing circuit i.e. Buddha International Circuit, situated at Greater Noida, Gautam Budh Nagar, U.P. On 30.10.2011, the **FORMULA 1 GRAND PRIX OF INDIA** (17th race of the Formula One Season) was successfully hosted at the Buddha International Circuit, Gautam Budh Nagar.

Acting on the intelligence developed by the officers of DGCEI, Delhi Zonal Unit, R. K. Puram, New Delhi that JSIL had not discharged their service tax liability in connection with Formula 1 Grand Prix of India (**'F-1 Race'**) held at Buddha International Circuit, a team of Officers visited the office of JSIL on 03.11.2011. During the visit, JSIL by its letter dated 03.11.2011 submitted various documents such as copies of Service Tax returns, Annual Audited statements, Organisation Agreement dated 20.01.2011, Race Promotion Contract dated 13.09.2011, Service Agreement dated 13.09.2011, Artwork Agreement dated 13.09.2011, invoice dated 23.09.2011 for US\$ 40,124,120.26, confirmation letter dated 03.11.2011 of Banker regarding remittance to Formula One World Championship Ltd. (**'FOWC'**) and other related documents.

3. Statement of Mr. R. S. Kuchhal, Authorized Signatory of JSIL was recorded on 03.11.2011 to the effect that payment of US\$ 40,124,120.26 has been made to FOWC for acquiring the right to host, stage and promote the F-1 Race, 2011. By Letter dated 27.07.2012, Mr. R. S. Kuchhal also informed that payment of US\$ 40,124,120.26 was made to FOWC under the Rent Promotion Contract dated 13.09.2011, payment of US\$ 20,00,00 was made to Formula One Management Ltd. (**'FOM'**) under the Service Agreement dated 13.09.2011, on which service tax amounting to Rs.1,34,68,358/- was deposited on 06.02.2012 under the category of 'Business Support Services'.

4. Show Cause Notice dated 09.07.2014 was then issued by the Additional Director General, DGCEI alleging that FOWC had transferred representational rights to JSIL to host, stage and

promote F-1 Race in India, which constitutes 'Franchise Service' as defined under Section 65(105)(zze) and since FOWC has no office in India, hence the JSIL being recipient of service, is liable to pay service tax on such services. The show cause notice also alleged that the services provided by FOM to JSIL under the Service Agreement dated 13.09.2011 are 'Business Support services', receipt of which within India qualify as 'import of service' and accordingly JSIL is liable to pay tax on such services under reverse charge mechanism. The show cause notice also invoked extended period of limitation alleging suppression of facts regarding rendering/receiving taxable services.

Vide judgment and order dated 14.09.2015 of the Hon'ble Allahabad High Court, JSIL stood amalgamated with M/s Jaiprakash Associates Limited.

5. After considering the submissions of the Appellant in reply to the show cause notice, the Ld. Commissioner adjudicated the show cause notice as per the order indicated in paragraph 1 supra. The demand of Service Tax of Rs.20,36,32,619/- has been confirmed on the ground that the transaction between JSIL and FOWC under the Race Promotion Contract is a 'Franchise Service' provided by FOWC to JSIL and since FOWC has no office in India, hence JSIL being recipient of service, is liable to pay service tax on such services. The Commissioner has also held that the services provided by FOM are in the nature of 'Business Support Service', and since FOM has no office in India, hence JSIL is liable to pay service tax amounting to Rs.1,12,23,633/-. Thus, the Commissioner has confirmed the demand of service tax to the tune of Rs.21,48,56,252/- [Rs.20,36,32,619/- + Rs.1,12,23,633/-] along with interest and penalty of Rs.21,48,56,252/- u/s 78, the amount of Rs.1,34,68,358/- deposited by JSIL has been appropriated and a further penalty of Rs.10,000/- u/s 77 has been imposed for failure to incorporate the services in the registration certificate.

6. Aggrieved by the impugned order, the Appellant is in appeal on the grounds stated in the appeal.

7. At the outset, the Id. Counsel has explained the modalities of Formula One Championship racing competition and organisation of races as under:-

- (i) Races of Formula One cars (having cylinder capacity upto 3 litres and minimum weight of 600 kgs) are undertaken by Federation Internationale De L'Automobile ('**FIA**') and are held under the name of '**Formula One Grand Prix**' or '**Grand Prix**' suffixed with the hosting country's name and the year of the event. Such racing competitions comprises of number of rounds/races, held in different countries around the world, each one referred to as '**Grand Prix**'.
- (ii) Organisers around the world, who are capable of providing racing circuits of the technical specifications laid down by FIA, seek approval of FIA and thereafter enter into a tripartite agreement, called as '**Organisation Agreement**' with the FIA and the National Motor Sport Authority of the host country, based on which FIA circuit license is issued and thereafter Super Licence Certificate specifying the category/capacity of authorisation is also issued.
- (iii) As the requirement of dedicated drivers, logistic support, competitors, officials, marshals and other technical manpower, are monopolised by FIA, hence to meet such expenses, FIA has authorised FOWC to negotiate the contracts with the concerned approved Organiser of a particular race from commercial angle, to arrive at the amount of fee and other expenses to be recovered for running the event at the circuit and hosting, staging and promoting the event in their country, within the terms and conditions set out in the Organisation Agreement. Consequently, an agreement involving commercial terms and conditions for running the event, called as '**Race Promotion Contract**', is also entered into between the FOWC and the Organiser.
- (iii) Thus, in terms of the Organisation Agreement and Race Promotion Contract, the Organiser hosts and stages the

event after seeking necessary permissions within his country whereas the manpower and racing equipments (cars, drivers, officials, marshals etc.) are provided by FIA.

8. After elaborating the above modalities, the Id. counsel submitted that as the circuit of JSIL confirmed to the specifications laid down by FIA, hence JSIL was issued approval by the FIA, after which the JSIL entered into a tripartite Organisation Agreement dated 20.01.2011 with FIA and the Federation of Motor Sports Club of India ('**FMSCI**'), under which the JSIL undertook to organise a Grand Prix Event, in consideration for and subject to such event being duly listed by the FIA in the calendar of the FIA Formula One World Championship.

9. The Id. counsel then submitted that the Race Promotion Contract dated 13.09.2011 was executed between JSIL and FOWC, wherein JSIL was granted the right to host, stage and promote the **FORMULA 1 GRAND PRIX OF INDIA** ('**Event**') against consideration of US\$ 40,124,120.26, subject to the execution of Artworks agreement with FOWC and Service Agreement. Under the Artworks Agreement dated 13.09.2011 executed with Formula One Management Ltd. ('**FOM**'), JSIL was granted a non-exclusive, non-transferable royalty free licence to use the artwork and incorporate such licensed marks in licensed materials approved by FOWC and under the Service Agreement dated 13.09.2011, FOM was appointed to carry out and perform all services relating to the organisation of the international television feed and broadcasting of Event against consideration of US\$ 2,000,000.

10. The Id. Counsel further submitted that *sine-qua-non* for franchise service is transfer of representational right and in the present case JSIL merely had the right to host, stage and promote the event and was not given any right to represent FOWC and therefore there is no transfer of representational right in the present case. The Id. Counsel also submitted that the various clauses of the Race Promotion Contract clearly shows

that JSIL retained its identity throughout the event and the identity of JSIL never got subsumed in the identity of FOWC, as the entire event was conducted by FIA only. The Id. Counsel also submitted that the entire facts were in the knowledge of the Officers of DGCEI, who visited the premises on 03.11.2011 i.e. just after three days of the Event and were provided with all the documents and agreements, hence in absence of any fact of suppression, the show cause notice issued on 09.07.2017 is barred by limitation. It has also been submitted that penalty has wrongly been imposed and the findings recorded in the impugned order are perverse and contrary to the material available on record. As regards the demand of Rs.1,12,23,633/-, the Id. Counsel submitted that since the said amount of service tax was already paid on 06.02.2012 along with interest and the said fact was communicated vide letter dated 27.07.2012, the demand and appropriation of the said amount is arbitrary.

11. Per-contra, the Ld. D.R submitted that the Race Promotion Contract involves transfer of representational right and hence demand has been rightly made after invoking extended period of limitation and penalties have rightly been imposed. He further submitted that the appeal filed by the appellant, being devoid of any merits, may be dismissed.

12. We have considered the submissions made in the appeal memo, written submissions, the convenience compilation and by the Id. Counsel during the course of hearing of the appeal, along with the submissions made by the Id. D.R. After hearing both the sides, we find that the issues that need to be deliberated in the present appeal are as under:-

- (i) Whether the Race Promotion Contract dated 13.09.2011 executed between JSIL and FOWC is covered by the expression 'franchise' as defined under Section 2(47) of the Finance Act, 1994 and therefore a taxable service under Section 65(105)(z) of the said Act;
- (ii) Whether the show cause notice dated 09.07.2014 was rightly issued in respect of tax liability under the Service

Agreement dated 13.09.2011, when the entire service tax liability along with interest on this issue was deposited on 06.06.2012;

- (iii) Whether extended period of limitation was rightly invoked in the facts and circumstances of the present case; &
- (iv) Whether penalties imposed under Sections 77 and 78 are justified in the facts and circumstances of this case.

13. So far as the first issue is concerned, we find that the entire case of Revenue is based on the Race Promotion Contract dated 13.09.2011, which has been treated by the revenue as a Franchise Agreement and on the basis of which the revenue has formed an opinion that FOWC transferred representational rights to JSIL against a consideration, thereby providing Franchise Service to JSIL and since FOWC has no office in India, hence JSIL being recipient of service, is liable to pay service tax on such services. The revenue has also relied upon letter dated 10.08.2011 of Ministry of Youth Affairs and Sports, Government of India to the effect that the Race Promotion Fee is akin to Franchisee Fee and also the written statement dated 12.06.2012 of Sri Rajan Sayal, Chief Executive of FMSCI to the effect that FIA is world body governing the motor sports, FOWC has received the commercial rights from FIA to run the Formula One Championship Events all over the world, FOM is the main operating company of the Group that controls broadcasting, operation and organisational rights and that the remittance of US \$ 40.12 million is a franchisee fee paid to FOWC for conducting F-1 race in India.

14. To appreciate the issue, it would be pertinent to examine the agreements on record. The first agreement is titled as Organisation Agreement dated 20.01.2011, the second one as Race Promotion Contract dated 13.09.2011, the third one as Artworks Agreement dated 13.09.2011 and the last one as Service Agreement dated 13.09.2011.

15. The Organisation Agreement dated 20.01.2011 is a tripartite agreement executed between FIA, JSIL (referred to as

Organiser) and FMSCI and the relevant clauses are reproduced hereunder:

1. *The Organiser undertakes to organise the Event in the consideration for and subject to such Event being duly listed by the FIA in the Calendar of the FIA Formula One World Championship following an application by its FMSCI prior to the date thereof.*
10. *The Organiser agrees not to seek to limit or modify advertising or decoration on the competitor's vehicles drivers or personnel unless obliged to by the laws of the country in question and provided that it has informed the FIA of this at the time application was made to include the Event on the FIA International Calendar. Likewise no advertising and / or decoration on competitor's vehicles drivers or personnel shall be imposed by the Organiser. The Organiser will not permit any persons concerned with the organisation of the Event to wear or carry any advertising material nor permit any such persons to use any championship logo other than the official FIA Formula One World Championship logo (in the format supplied by the FIA) in any visual material connected with the Event, save only to the extent first approved by the FIA.*
11. *The Organiser shall ensure that no person can, whether on payment or otherwise gain access to any part of the Circuit which is not protected in the event of an accident to at least the degree required by local laws and by the FIA for the general public and, without prejudice to the generality of the foregoing, to the paddock, pits, pit lane and track, unless such person is in possession of a pass or tabard issued by or on behalf of the FIA (a "Pass"). The Organiser further*

undertakes that each such person to whom a Pass is issued will wear it in the prescribed manner at all times when on duty.

12. *The Organiser will supply to the FIA no later than 60 days before the Event, a list of all persons concerned with the organisation of the Event who will need passes or tabards in order to carry out their duties, together with the function of each such person and the Organiser undertakes that such Passes will only be used by such persons as the Organiser has thus listed or described.*
15. *The Organiser shall provide a covered area where the FIA can install and operate weighing equipment and operate a secure parc ferme. Such area must be agreed to with the FIA prior to allocation of space for competitors in accordance with the Sporting Regulations.*
20. *The Organiser must make available for the exclusive use of the FIA on the Circuit such offices and facilities as are necessary for the FIA properly to fulfil its duties in relation to the Event. Such facilities must be agreed to with the FIA prior to the allocation of space for other uses.*

The Race Promotion Contract dated 13.09.2011 was executed between FOWC and JSIL and the clauses are reproduced hereunder:

- (A) *The Federation Internationale de l'Automobile (**FIA**) is the governing body of world motor sport. The FIA is responsible for the sporting organisation and regulation of the FIA Formula One World Championship (the **Championship**), and has the right to supervise the sporting organisation of individual rounds of the Championship.*
- (B) *Pursuant to various agreements between the FIA,*

FOWC and its Affiliates (as defined in Clause 1(p)) etc., FOWC has the exclusive right to exploit the commercial rights in the Championship, including the exclusive right to propose the Championship calendar and to award to promoters the right to host, stage and promote Formula One Grand Prix events that count towards the Championship, exclusive media rights(including all use of audio-visual material and data in the media space).

- (C) *FOWC has the exclusive right to enter into contracts solely for the hosting, staging and promotion of Formula One Grand Prix events entered on the FIA International Sporting Calendar and counting towards the Championship, it being understood that such a contract will govern exclusively the commercial and financial management of the Event (as defined in Clause 3.1(t)).*
- (D) *The Promoter is the owner of a motor racing circuit in the National Capital Region of India which is capable of hosting various motor racing events. The Promoter wishes to host various motor racing events at such circuit, to include the hosting of Formula One Grand Prix events. The Promoter had secured the privilege to host such events and is now executing this agreement with FOWC to set out the terms and conditions on which it will host, stage and promote Formula One Grand Prix events at such circuit.*

2.2 *The conditions are the delivery to FOWC of:-*

- (a) *evidence that the Promoter has entered into a valid and binding agreement with Beta Prema 2 Limited (Beta), in a form satisfactory to Beta;*
- (b) *evidence that the Promoter has entered into a valid and binding agreement with All sport*

Management S.A (All sport) in a form satisfactory to All sport;

- (c) evidence that the Promoter has entered into a valid and binding agreement with such third party in accordance with clause 18.3 (Service Agreement); and*
 - (d) payment of the sum of Forty Million One Hundred and Twenty Four Thousand One Hundred and Twenty United States Dollars Twenty Six Cents (US\$ 40,124,120.26) in accordance with Clause 24.1(a)*
- 4.1 FOWC agrees subject to the terms of this Agreement to grant to the Promoter during the Term the right to host, stage and promote the Event (the **Right**).*
- 4.2 The Promoter agrees that the Right is limited to the Event.*

Promoter's Warranties

- 5. In consideration of the foregoing the Promoter warrants at the date of this Agreement and throughout the Term that*
- (a) subject to Clause (4), the Promoter has or will have the exclusive right to act as the promoter of the Event.*
 -*
 - (f) that it is or will be in exclusive possession of such rights as are necessary for the purposes of hosting and the staging the Event at the Circuit.*
 - (g) that it has applied for and obtained or will make timely application for and will obtain all licenses and consents (including if necessary and Governmental consents) necessary for the Event to take place, and that all such licenses and*

consents are or will be unconditional (or subject only to such conditions as have been notified to and approved by FOWC) and are not (or will not be) subject to revocation.

- (i) every aspect of the Circuit including the permanent buildings, permanent infrastructure, track layout, amenities, spectator viewing facilities, the pit/paddock building, media centre and medical centre, will be constructed, subject to the approval of FOWC and the FIA, and completed in good time before a final inspection by the FIA pursuant to the Regulations not later than 12 October 2011.*

Promoter's Undertakings

6.1 The Promoter undertakes that throughout the Term it will:

- (f) ensure with respect to each Event held during the Term that there is a bonded area within the Circuit for customs facilities in respect of the Formula One Cars spares and ancillary equipment;*
- (g) obtain and maintain throughout the Term all necessary consents and approvals concerning compliance of the Circuit (including in respect of track layout, television commentary booths and any and all facilities and equipment utilised or proposed to be utilised for the Event) with all requirements of the FIA and current criteria (pertaining to safety and otherwise) which requirements and criteria the Promoter warrants to so obtain and maintain;*
- (j) ensure that no commercial brand or logo will be included or associated with the Circuit name or any building utilised for the staging of the Event and that the Circuit, its name and the land upon*

which the Circuit is built, as shown edged in green on the Annex (Land) will not be sponsored in any manner whatsoever save as permitted by FOWC under this Agreement.

36.1 The rights granted in this Agreement are personal to the Promoter and the Promoter may not sell, assign, sub-license, charge, dispose of by way of declaration of trust or otherwise deal with (or purport to sell, assign, sub-license, charge dispose of by way of declaration of trust or otherwise deal with) any rights granted herein (whether beneficially or legally) to a third party except with the prior written consent of FOWC whose consent may be given or withheld in the absolute discretion of FOWC. FOWC shall have the right to assign, license, charge or otherwise dispose of any or all of the benefits or obligations on its part under this Agreement without the consent of the Promoter provided the assignee has the capacity and ability to comply with the rights and obligations of FOWC pursuant to this Agreement.

37. FOWC and the Promoter are independent contractors with respect to each other and nothing in this Agreement is intended to or shall operate to create any association, partnership, joint venture or agency relationship of any kind between them.

16. Artwork Agreement dated 13.09.2011 was executed between FOWC and JSIL wherein JSIL was granted a non-exclusive, non-transferrable, royalty free license permitting the incidental use of certain intellectual property (including certain trade marks) and Artwork solely for the limited purpose of facilitating the hosting, staging and promotion of the Event.

Service Agreement dated 13.09.2011 was executed between FOM and JSIL wherein JSIL engaged FOM to carry out

and perform all services relating to origination of the international television feed and host broadcasting for the Event.

17. It is clear from the Organisation Agreement dated 20.01.2011 that JSIL undertook to organise the Event i.e. F-1 Race, in the consideration for and subject to the Event duly listed in the FIA calendar. Clause 10 provides that JSIL cannot limit or modify advertising or decoration on the race cars and drivers, JSIL cannot permit or allow any advertising material other than official FIA logo. Clause 11 provides that JSIL shall ensure that no person gains access to the circuit, other than those who have been allowed by FIA by way of issuance of pass and tabard. Clause 12 provides that list of the persons concerned with organisation of Event shall be provided by JSIL to FIA, who shall be issued passes by FIA. Clause 15 and 20 provides that JSIL shall provide suitable area, officers and facilities, for the FIA to properly fulfil its duties in relation to the Event. Thus, when all the clauses of the Organisation Agreement are read together, it appears that though the JSIL undertook to organise the event, but races were conducted by the FIA and JSIL was required to undertake all the incidental and necessary activities facilitating the FIA.

18. It is clear from the Race Promotion Contract dated 13.09.2011 that FIA being the governing body of world motor sport, is responsible for the sporting organisation and regulation and has the right to supervise the individual rounds of the championship [Clause (A)], the FOWC has the right to exploit the commercial rights in the championship, including the exclusive right to propose the championship calendar and to award the promoters the right to host, stage and promote the championship i.e. the commercial and financial rights [Clause (B) & (C)] whereas the JSIL had already secured the privilege to host the event and executed the contract to set out the terms and conditions on which it will host, stage and promote the event. Clauses 4.1 & 4.2 makes clear that what has been transferred by FOWC to JSIL is the right to host, stage and promote the event

and such right is limited to the event. Sub-clauses (a), (f), (g) and (i) of Clause 5 makes it clear that the JSIL has the exclusive right to act as the promoter of the event and it has to act independently for other rights, which are necessary for the purpose of hosting and staging the event and to apply for and obtain all necessary licenses and consents in its own name and that everything in relation to the circuit was to be constructed subject to approval of FOWC and the FIA. Sub-clauses (f), (g) and (j) of Clause 6 also provides that JSIL undertakes to maintain a bonded area within the circuit for customs facilities in respect of the case and ancillary equipments, obtain and maintain all necessary consents and approvals and also ensure that no commercial brand or logo is included or associated with the circuit name or any building utilised for staging the event. Clause 7 prohibits the JSIL from restricting in any manner, the advertising displayed on the cars, drivers or personnel and JSIL cannot require any car, driver or personnel to carry any advertising material. Clause 8 requires JSIL to allocate pits, pit area, pit area parking, garages etc. in the manner specified by FOWC. Clause 14 further obliges JSIL to ensure that only passes and tabards issued by FOWC under the authorisation of FIA shall have access to the parts of circuit and that the validity of any passes and tabards issued by FOWC is upheld. Clause 18 prohibits the JSIL from permitting filming/recording at the event, without the permission of FOWC. Clause 36.1 provides that the rights transferred under the contract are personal to JSIL and JSIL cannot sell, assign, sub-license, charge, dispose of or otherwise deal with any rights granted herein with any third party. Clause 37 provides that both FOWC and JSIL are independent contractors and nothing in the contract shall operate as any agency between them.

19. The dispute in the present appeal is whether the transaction between the FOWC and JSIL under the Race Promotion Contract dated 13.09.2011 amounts to Franchise Service under the amended definition of 'franchise'.

20. The taxable service under section 65(105)(z) of the Finance Act means a service provided or to be provided to a franchisee, by the franchisor in relation to franchise. The expression '**franchise**' has been defined under sub-section (47) of Section 65 as under:-

(47) "franchise" means an arrangement by which the franchisee is granted representational right to sell or manufacture goods or to provide service or undertake any process identified with franchisor, whether or not a trademark, service mark, trade name or logo or any such symbol, as the case may be, is involved.

This Tribunal in **Global Transgame Limited v. Commr. of Central Excise 2013 (32) S.T.R 86 (Tri-Mum)** has held that the foremost requisite for a service to qualify as a taxable 'franchise' service is that the franchisee should have been granted a representation right and that in a franchise transaction, the franchisee loses its individual identity and represents the identity of 'franchisor' to the outside world. In **Tata Consultancy Services Ltd. v. Commissioner of Central Excise 2019 (6) TMI 109-CESTAT MUMBAI**, this Tribunal held that the grant of a representational right would imply that the person to whom such a right has been granted undertakes the entire activity as if it had been undertaken by the person granting such rights.

In **National Internet Exchange of India [Final Order No. 52638/2018, dated 27-7-2018 by CESTAT, New Delhi]**, the Principal Bench of this Tribunal at Delhi, after examining the definition of "franchise", observed as follows :-

"Representational right permits the person to represent himself as someone else to the external world such that the external world feels that he is procuring goods or services from the brand owner 19 Service Tax Appeal No.55357 of 2013 which can be termed as franchise rights. For the purpose franchise must surrender his

own identity and in addition must step into the shoes of the franchisor.”

21. After considering the aforesaid definition, the Hon'ble Delhi High Court in **Delhi International Airport P. Ltd. v. Union of India & Ors (2017) 50 STR 275**, after considering the scope and ambit of taxable services under Section 65(105)(zze) has held as under:-

56. *Merely because, by an agreement, a right is conferred on a party to sell or manufacture goods or provide services or undertake a process, would not ipso facto bring the agreement within the ambit of a franchise. What is also required is to establish that the right conferred is a "representational right".*

57. *The term "representational right" would necessarily qualify all the three possibilities i.e., (i) to sell or manufacture goods, (ii) to provide service and (iii) undertake any process identified with the franchisor.*

58. *A representational right would mean that a right is available with the franchisee to represent the franchisor. When the Franchisee represents the franchisor, for all practical purposes, the franchisee loses its individual identity and would be known by the identity of the franchisor. The individual identity of the franchisee is subsumed in the identity of the franchisor. In the case of a franchise, anyone dealing with the franchisee would get an impression as if he were dealing with the franchisor.*

22. The aforesaid dicta of law has been followed by this Tribunal in *Siti Cable Network Ltd. v. Commissioner of Service Tax, Delhi-III 2021 (44) G.S.T.L 412 (Tri-Del)* and *Mahanagar Telephone Nigam Limited v. Commissioner of Central Excise and Service Tax, New Delhi 2021 SCC OnLine CESTAT 167* and it has

been consistently held that in a franchise transaction, the franchisee loses its individual identity and represents the identity of 'franchisor' to the outside world. This Tribunal further held that a person to whom such right is granted undertakes the entire activity as if it has been undertaken by the person granting such rights and that the franchisee must surrender his own identity and in addition must step into the shoes of the franchisor.

The same view has been recently taken by this Tribunal in ITW India Ltd. v. Commissioner of Central Excise & ST (2023) 12 Centax 335 (Tri-Ahmd), wherein after referring to the definition and circular issued by the department, this Tribunal held:-

***10.2** From the above explanation provided by the Circular (supra), it can be seen that merely because by an agreement a right is confirmed on the party to sale of goods or service undertaken was not ipso-facto bringing the agreement within the ambit of franchisee. What is essentially required is to establish that as per the agreement the rights has not conferred on franchisee which amount to representational rights. To our understanding, the representational right would mean that for all practical purposes the franchisee losses its own identity and acquire with that of the franchisor.*

23. Thus, "franchise" means an agreement by which the franchisee is granted '**representational right**' to sell or manufacture goods or to provide service or undertake any process identified with franchisor, whether or not a trade mark, service mark, trade name or logo or any such symbol, as the case may be, is involved. The sine-qua-non for Franchise Service is therefore grant of 'representational right' to sell or manufacture goods, or to provide service or to undertake any process identified with the franchisor.

An analysis of the Race Promotion Contract establishes that no 'franchise' service has been rendered by FOWC to JSIL for the following reasons:

- (i) The agreement is for transfer of right to host, stage and promote the Event, wherein races shall be conducted by the FIA and its affiliates and JSIL was required to provide necessary facilities and amenities for the same including necessary licenses and permissions in its own name. The consideration paid by JSIL is also in lieu of grant of such right. There is no explicit or implied intention to grant representational rights in the agreement, whereby JSIL could represent FOWC in any capacity;
- (ii) FOWC, being only authorised by FIA to negotiate the contracts with the Organisers with commercial angle only, hence there was no authority with the FOWC to grant any representational right in respect of the F-1 Race;
- (iii) There is also no identified consideration for the license permitting use of certain intellectual property. The license to use intellectual property is only an incidental aspect to the conduct of race by FIA & FOWC and the consideration paid for grant of right to host, stage and promote the Event cannot be linked with the license to use intellectual property, and the same is also not the case of revenue;
- (iv) JSIL also does not have significant degree of control over conducting the race as the race was conducted by FIA and its affiliates and JSIL was prohibited from interfering in the displayed on the cars, drivers or personnel, allowing any other competitors cars to participate, interfere in the work of conducting races, allow any person other than those authorised by FIA to enter the circuit and area allotted to FIA and its affiliates, filming/recording the Event, include or associate any commercial brand or logo with the circuit name or any building utilised for staging the event etc.;
- (v) JSIL retained its individual identity and its identity never got lost or subsumed in the identity of FOWC, as at no point of time, JSIL was known to the outside world as FOWC, as agreement required JSIL to obtain necessary licenses and permissions in its own name, enter into

contract with third parties in its own name, uphold the passes and tabards issued by FIA/FOWC, to act as an independent contract throughout the currency of the agreement;

- (vi) The agreement also does not stipulate that JSIL stepping into the shoes of FOWC and on the contrary it contemplates JSIL to act independently of FOWC.

24. Additionally, once the impugned order records a finding in paragraph 6.2.11 that the event was conducted by FOWC themselves and FOWC and its associates were present to conduct the event, then the transaction in question cannot be a 'franchise' service, as in such a case, it cannot be said that JSIL represented FOWC or stepped in the shoes of FOWC or represented the identity of FOWC to the outside world.

25. Further, the reliance in the impugned order of the letter 10.08.2011 issued by the Ministry of Youth Affairs and Sports, Government of India to the effect that race promotion fee is akin to franchisee fee, is also not legally tenable as the said letter was issued for permitting remittance of foreign exchange and the Ministry was not concerned whether the Race Promotion Contract is a Franchise Agreement or not. Thus, the contents of letter dated 10.08.2011 were in completely different context. The statement of Sri Rajan Sayal, Chief Executive of FMSCI to the effect that the remittance of US \$ 40.12 million is a franchisee fee paid to FOWC for conducting F-1 race in India, is based on the letter dated 10.08.2011 of the Ministry and therefore does not advances the case of the revenue.

26. Thus, it is not possible to hold that the Race Promotion Contract is a Franchise Agreement, under which FOWC provided franchise service to JSIL and consequently the demand of service tax of Rs.20,36,32,619/- is clearly not sustainable.

27. As regards the second issue is concerned, we find that the demand of Rs.1,12,23,633/- pertains to payment of US \$ 20,00,00 to FOM arising out of Service Agreement dated 13.09.2011, for which invoice was issued by FOM on

17.04.2012, payment was made by JSIL on 16.05.2012 and service tax of Rs.1,34,68,358/- (inclusive of interest) was deposited on 06.06.2012, which fact is also recorded in the impugned. Apparently when the entire amount of service tax along with interest was deposited, we find no reason for issuance of show cause notice on this count in view of specific provisions contained in sub-section (3) of Section 73. However, since the Id. counsel for the appellant has fairly not pressed the demand on merits, no further findings in this regard are necessary.

28. As regards the third issue, Id. Counsel for the Appellant has made elaborate submissions. We find that the Event took place on 31.10.2011 and the Officers conducted visit on 03.11.2011 and on the same date all the agreements, invoice etc. were made available to the revenue. Return for the period Oct, 2010 to March, 2011 was filed on 20.04.2012 not admitting any tax liability but the show cause notice was issued only on 15.07.2014 alleging suppression of facts. The fact that the entire facts were known to the revenue even before filing of return wherein no tax liability was admitted and in absence of any other positive act on the part of JSIL to deliberately suppress correct information with the intent to evade payment of tax. In these facts, the invocation of extended period of limitation cannot be sustained in view of dicta laid down in Padmini Products Limited v. CCE (1989) 43 E.L.T. 195 and Pushpam Pharmaceuticals Company v. CCE (1995) 78 E.L.T. 401.

29. As regards the last issue, once the demand of Rs.20,36,32,619/- is not found sustainable on merits, the question of imposition of penalty under Section 78 does not arise. The penalty of Rs.1,12,23,633/- is also not sustainable in view of Explanation 2 to Section 73(3), which provides that no penalty is to be imposed when short paid service tax is deposited along with interest prior to the issuance of show cause notice. The demand being not sustainable on merits, the imposition of penalty under Section 77 and demand of interest is also not sustainable.

30. For all the reasons stated above, the appeal is allowed, the demand of service tax to the extent of Rs.20,36,32,619/-, penalty imposed under Sections 78 and 77 and demand of interest cannot be sustained and the same are accordingly set-aside. The appeal filed by the Appellant is accordingly allowed to this extent, with consequential reliefs to the Appellant.

(Order pronounced in open court **13th February, 2024**)

Sd/-
(P. K. CHOUDHARY)
MEMBER (JUDICIAL)

Sd/-
(SANJIV SRIVASTAVA)
MEMBER (TECHNICAL)

LKS