

**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE  
TRIBUNAL,  
SOUTH ZONAL BENCH, CHENNAI  
COURT HALL No. III**

**SERVICE TAX APPEAL No.40244 OF 2023**

(Arising out of Order-in-Appeal No.143/2023 dated 23.03.2023 passed by Commissioner of Central Excise (Appeals-II), Newry Towers, 2<sup>nd</sup> Floor, No.2054, II Avenue, 12<sup>th</sup> Main Road, Anna Nagar, Chennai 600 040)

**R. Ashwin**

No.2, Ramakrishnapuram, 1<sup>st</sup> Street,  
West Mambalam,  
Chennai 600 033.

**.... Appellant**

Versus

**The Commissioner of GST & Central Excise,**

Chennai South Commissionerate  
No.692, MHU Complex, Nandanam,  
Chennai 600 035.

**...Respondent**

**APPEARANCE :**

Mr. Joseph Dominic, Consultant  
For the Appellant

Ms. Anandalakshmi Ganeshram, A.C (A.R)  
For the Respondent

**CORAM :**

**HON'BLE MS. SULEKHA BEEVI C.S., MEMBER (JUDICIAL)  
HON'BLE MR. VASA SESHAGIRI RAO, MEMBER (TECHNICAL)**

**DATE OF HEARING : 06.12.2023  
DATE OF DECISION :13.12.2023**

**FINAL ORDER No.41112/2023****ORDER : Per Ms. SULEKHA BEEVI C.S.**

Brief facts are that the appellant, Sri R. Ashwin is a cricketer playing for the 'Chennai Super Kings' owned by M/s.India Cements Limited who is a Franchisee (hereinafter referred to as M/s.ICL) in the Indian Premier League (IPL). M/s.ICL is engaged in the manufacture of cement which is sold under various brand names "Coromandel Cement", "Sankar Cement", "Rasi Cement" etc.

2. The Board of Control for Cricket in India (BCCI), is the apex governing body for Cricket in India and headquartered at Mumbai. It appeared that the BCCI with an idea to pursue its commercial activities, proposed forming as a separate sub-committee unit, working council known as 'INDIAN PREMIER LEAGUE' for conduct of 'Twenty 20 Cricket competition'. The IPL was proposed to be a franchise-model where Corporate and Sponsors would be allowed to buy and run teams for conduct of cricket matches in IPL. Only the teams who have been permitted to operate as a 'Franchisee' can participate in the tournament and neither the State Team nor any Authorized Association (constituents of BCCI) can nominate their team for the IPL. Under this franchisee model, the sponsors / franchise units who

have its team have to pay franchisee fee to BCCI/IPL to obtain the ownership of the team. Accordingly, a tender document called "Franchisee Tender Document" was made available inviting franchisees. M/s.ICL was one among the 8 franchisees finalized and they named their cricket team as 'Chennai Super Kings'.

3. After finalization of 8 franchisees in order to provide players for each franchisee, the BCCI collected a list of agreed contracted players, which included players of Indian origin and players of foreign origin. A base price was fixed for each of them and under the process of auction, each franchisee was allowed to bid for any player from the list. In addition to the contracted players, each franchisee was also allowed to accommodate their local players and promising young cricketers.

4. M/s.ICL after successfully bidding the appellant, Shri R. Ashwin, entered into an agreement named as "Indian Premier League Playing Contract" dated 13.4.2008. As per the agreement, the appellant is required to play on behalf of M/s.ICL in the team of 'Chennai Super Kings'. The appellant was to receive the player fee and other benefits set out in Schedule I of the Agreement. In addition to the player fees, the appellant also received 10% of the player fee for various promotional activities of M/s.ICL and its partners, sponsors etc. From the agreement it appeared that the payment made to appellant though split up between player fee and payment for promotional activities, the whole payment appeared to be of composite nature.

5. Scrutiny of annual report of M/s.ICL indicated that their participation in IPL as a franchisee is for commercial considerations so as to provide platform to build corporate and create brand image for the company. Thus, it appeared to the department that the intention of M/s.ICL in participating in IPL is purely commercial in nature. Based on the agreement entered between the appellant and M/s.ICL and the payments made to the appellant by M/s.ICL, the department entertained a view that appellant is rendering taxable service of Promotion of Brand of Goods, Services, Events of M/s.ICL and the payments made by M/s.ICL to appellant is consideration for such services. As per the agreement entered for the period from 2011-12 (Season 4) the payment to the appellant is split up as player fee and payment for promotional activities and as per clause 4 of the agreement read with Schedule I (a), only 10% of player fee relates to activities under Brand Promotion.

6. The department was of the view that the amount paid to the appellant is a consideration for the brand promotion services rendered to M/s.ICL by the appellant and the activity would fall under the definition of service as under Section 65B (44) of the Finance Act, 1994 with effect from 1.7.2012. Show cause notice was issued for the period July 2012 to March 2014 proposing to demand service tax on the amounts received by the appellant from M/s.ICL along with interest and for imposing penalties. After due process of law, the original authority vide order impugned herein confirmed the demand of service tax along with interest and imposed penalty under Section 76 (1) as well as Section 77 of the

Finance Act, 1994. Aggrieved by such order, the appellant is now before the Tribunal.

7. The Learned Consultant Shri Joseph Dominic appeared and argued for the appellant. The agreement entered between the appellant and M/s.ICL was adverted to by the Ld. Counsel. It is submitted that this agreement of 2011 is a Tripartite agreement and is executed by the appellant, M/s.ICL as well as BCCI. Clause (1) of the agreement sets out the conditions wherein it is stated that the appellant is obliged to be physically and mentally capable of discharging his obligations. As per the agreement, the appellant has to submit himself for medical examination by a qualified doctor. Clause 2 of the agreement provides for the appointment / remuneration. It is stated in clause (2) that M/s.ICL has engaged the appellant as a professional cricketer who has an obligation to play and that M/s.ICL shall pay to the player, the Player Fee and other benefits set out in the agreement. Clause 3 of the agreement stipulates the obligations of Player in which it is stated that appellant has to report before M/s.ICI (franchisee) not less than 7 days before the first match in the League. So also, it is stated that the appellant has to play solely for the franchisee in respect of IPL and cannot play for any other team, unless M/s.ICL in its absolute discretion decides to release the player to play for another team.

7.1 The Learned Consultant submitted that all these terms and stipulations in the agreement would indicate that the agreement is a contract of employment wherein M/s.ICL has engaged the

appellant to play for their team 'Chennai Super Kings'. The appellant is employed by M/s.ICL for the period of the tournament and the amount received by appellant is not a consideration but remuneration received for participation in the tournament as a player. The remuneration is fixed and does not vary depending upon the profit earned by M/s.ICL or depending upon the number of advertisement or promotional activities. Along with playing cricket, the appellant has to comply with other conditions of wearing the team clothing and M/s.ICL reserving right to photograph, both individually and as a member of the squad, M/s.ICL reserving right to televise etc. The main work for which the appellant is appointed is to play cricket. The appellant takes part in some brand promotional activities which is only ancillary to the main work of playing cricket. Such promotional activities are done as part of the agreement. Being appointed as a full time player, the appellant is barred from taking up any other employment or to be engaged or involved in any trade or business in any capacity or participation in other sport other than above activity without the prior written consent of M/s.ICL. These conditions in the contract establish that the contract is an employment contract and that there exists an employer-employee relationship between M/s.ICL and the appellant. There is no rendering of service by the appellant to M/s.ICL and the payments received are remuneration for work and not consideration for services of brand promotion.

7.2 Ld. Consultant submitted that the Tribunal in a batch of cases in the matter of *L. Balaji, S. Badrninath and Others Vs CCE & ST Chennai* vide Final Order No.40705-40752/2019 dt. 30.09.2019 had examined similar issue. After perusal of the agreement, the Tribunal was of the view that players are engaged as employees of the franchisee and that there being an employer-employee relationship, the activity does not fall under the category of any service. In the said case, the Tribunal had relied upon the decision passed by the Hon'ble High Court of Calcutta in the case of *Sourav Ganguly Vs UOI - 2016 (43) STR 482 (Cal.)*. The Hon'ble High Court had set aside the demand observing that the agreement being in the nature of employer-employee relationship, the demand of service tax on the remuneration received by the players cannot be subject to levy of service tax. The said decision was appealed before the Division Bench of the Hon'ble High Court and the appeal was disposed of by reversing the view.

7.3 Later, in the case of *Yusufkhan Pathan and Irfankhan Pathan* vide Final Order No.A/10086-10087/2023 dt. 20.01.2023, the Tribunal analysed the issue whether the demand of service tax under 'Business Support Service' can be sustained on the payments received by players as per the agreements entered between players and the franchisee. The Tribunal observed that the agreements are in the nature of employment agreement and the amounts received are in the nature of remuneration for the work done by the employee and therefore cannot be subject to levy of service tax. The demand was set aside.

7.4 The Chennai Bench of the Tribunal in the case of *India Cements Ltd. Vs CCE Chennai* vide Final Order No.40655-40656/2023 dt. 04.08.2023 had occasion to analyse the issue of demand of service tax on the franchisee viz. M/s.ICL on the payments made to the foreign player under reverse charge mechanism alleging that there is import of services. In para-15 of the said final order, the Tribunal held that the players are engaged as professional cricketers by franchisee and therefore the amount paid to the foreign players is remuneration and not consideration for services so as to be liable for service tax under reverse charge mechanism.

7.5 The Tribunal had followed the decision in the case of *Yusufkhan Pathan and Irfankhan Pathan* (supra) as well as the decision in the case of *KPH Dream Team Pvt. Ltd. Vs - 2020 (34) GSTL 456 (Tri.-Chan.)*. Ld. Consultant submitted that for the earlier periods 2010-2011 in ST/41422-41424/2014, the Tribunal had set aside the demand vide Final Order Nos.40705-40752/2019 dated 30.04.2019. The present demand is for the period from July 2012 to March 2014. This period is governed by the contract entered between the players M/s.ICL and BCCI in 2011. The terms of the contract are identical to those of previous contract except that in Schedule I the amount to be paid is stated as player fee and 10% of it for promotional activities. Even though 10% of the player fee is set apart as payment for promotional activity, the said amount is part of the remuneration or in the nature of benefits received by the appellant for doing the work of playing cricket and



ancillary work of doing promotional activities. The appellant being an employee is not rendering any services to M/s.ICL. For the earlier periods, the contract has been analysed and held to be in the nature of employment agreement and the same would be applicable to the contracts for this period also. The terms and conditions are the same for the earlier periods except for the apportionment of 10% of the player fee towards sponsorship and promotional activities. Ld. Consultant submitted that being contract of service, the activity does not fall under definition of 'service' as defined under Section 65B (44) of the Finance Act, 1944, and therefore, the demand cannot sustain. It is prayed that the appeal may be allowed.

8. Ld. A.R Ms. Anandalakshmi Ganeshram appeared and argued for the Department.

8.1 It is submitted by the Ld. A.R that the intention of M/s.ICL in participating in the IPL is purely of commercial nature. It is to develop and improve their brand and brand image. M/s.ICL has obtained franchisee of 'Chennai Super Kings' for the promotion and development of their brand and brand image. The appellant by playing cricket for M/s.ICL, who is the franchisee for 'Chennai Super Kings', is doing brand promotion services of M/s.ICL. As per the erstwhile provisions of Section 65 (105) (zzzzq) as it stood prior to 1.7.2012, 'Taxable service' in relation to 'Brand Promotion reads as under :

*"any service provided or to be provided to any person by any other person, through a business entity or otherwise,*

*under a contract or promotion or marketing of brand of goods services event or endorsement of name including a trade name, logo or house mark of a business entity by appearing in advertisement and promotional event or carrying out any promotional activity for such goods, service or event.*

*Explanation. For the purpose of this sub-clause, "brand" includes symbol, monogram, label, signature or invented words which indicate connection with the said goods, service, event or business entity."*

8.2 Though the regime of service tax law has shifted from levy of service tax on the basis of classification of services to the negative list with effect from 01.07.2012, the activity of 'Brand Promotion' is a service as it falls within the definition of 'service' under Section 65B (44) and does not fall under negative list. The same activity which falls under "Brand Promotion Service" for the period upto 30.06.2012 would fall under the definition of 'Service' as under Section 65B (44) w.e.f. 1.7.2012. It is very much clear that when a service is provided by any person to another under a contract for promotion of marketing of brand of goods, service, event or endorsement of name, by appearing in advertisement and promotion event etc. the activity amounts to rendering service in the nature of 'Brand Promotion'.

8.3 The essence of the contract between M/s.ICL and appellant is for brand promotion though the appellant is engaged for playing cricket also. Once the contract is entered for brand promotion, even if only 10% of the amount is bifurcated and provided for brand promotion and sponsorship related activities, it can be seen from the terms of the contract that the entire amount received by appellant is for brand promotion activity. This is the reason why the

appellant while playing cricket has to wear prescribed uniform with the brand name of the franchisee displayed conspicuously on the uniform. Though IPL is a sporting event, it is being used as a medium for promoting the brand of the franchisee. The bifurcation of the contract amount, with 10% for brand promotion and the balance 90% for playing cricket matches is nothing but an artificial vivisection of a composite contract which is legally not permissible. Further, this provision of 10% was clearly absent for the earlier periods and the same has been included from 2010-11 which is probably an afterthought. The entire amount paid to the appellant is only for brand promotional activity which is a 'service'. Therefore, confirmation of demand of service tax, interest and the penalties imposed under Section 76 (1) and Section 77 are legal and proper. Ld. A.R prayed that the appeal may be dismissed.

9. Heard both sides.

10. The issue is whether the appellant is liable to pay service tax on the amounts received by him from M/s.India Cements Ltd. under the IPL Playing Contract entered by the appellant with M/s.ICL as well as the BCCI. To appreciate the facts, it would be necessary to bring out the relevant parts of the contract which are reproduced as under :

"In consideration of the mutual covenants and promises contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the Parties and IPL, it is agreed as follows:

**1. Conditions**

1.1 The obligations of the Parties under this Agreement (excluding this Clause 1 and subject as provided in Clause 1.0 are conditional upon the following :

- (a) the Player passing, if requested and to the Franchisee's reasonable satisfaction, an assessment that he is physically and / or mentally capable of discharging his obligations under this Agreement as the start of each Season (being 7 days before the start of the League). Any such assessment shall be performed by a qualified doctor appointed by the Franchisee and the Player agrees to the release to such doctor of any past medical, psychiatric and/or dental records in his possession or which he is entitled to access which are relevant to and only to be used for such assessment. The Franchisee shall as soon practicable notify IPL (copying the Player) if there is a disagreement between the Parties as to the Player's fitness or mental capability and any such matter shall be referred to a doctor to be appointed by IPL who shall be provided with the above-mentioned past records if appropriate and whose decision in respect of the disagreement shall be final;

... ..

## **2. Appointment/Remuneration**

- 2.1 The Franchisee hereby engages the Player as a professional cricketer and shall provide to the Player the Player Fee and the other benefits set out below in each case subject to and accordance with this Agreement.

...

## **3. Player's Obligations**

- 3.1 The Player covenants with the Franchisee (and with IPL in respect of paragraphs (d), (i) (k), and (l) below that he shall during each Season:

- (a) unless agreed in advance by the Franchisee, report to the Franchisee not less than 7 days before the first match in the League (whether involving the Team or not) and only the Unavailability of the Player due to International Duty or any absence under Clause 3.1 (b) shall entitle him not to comply with this obligation. By way of example, if such first match is on 20<sup>th</sup> April in any year of the Term the Player will be obliged to report to the Franchisee on 13<sup>th</sup> April) in that year;
- (b) Play, if selected, in any Match whether in India or abroad but, notwithstanding any other provision of this Agreement, the Player shall not be obliged to play in any Match if he has decided to absent himself due to any exceptional personal circumstances which require the Player to be granted leave from the obligations under this Agreement including without limitation the death of serious illness of a close family member and the birth of the Player's child and in such circumstances the Player shall notify the Franchisee in writing before such absence;
- (c) Attend each match, even if not selected, unless otherwise agreed with the Franchisee;

...

- (f) play matches and train to the best of his ability and in so doing obey the lawful and reasonable directions of the captain of the Team and the Coach;

... ..

- (i) Play solely for the Franchisee in respect of the League and, if the Team qualifies for it, any CLT20 unless, in the latter case, (i) the Player is not selected for the Squad for such CLT 20; or (ii) the Franchisee to its absolute discretion decides to release the Player to play for another team (not being a team in the League) which has qualified for any such CLT20; or (iii) the rules of the CLT20 (or any agreement to which the Franchisee has agreed) permit the Player to elect to play for another team (not being a team in the League) which has qualified for such CLT20 and the Player so elects;

... ..

- (l) if so requested by the Franchisee or IPL attend and give (a) press conference(s) or interview(s);
  - (i) prior to any Match provided that the request is reasonable;
  - (ii) after any Match; and
  - (iii) at any other mutually agreed time

... ..

3.2 ..

- (c) without the Franchisee's prior written consent (not to be unreasonably withheld or delayed):
  - (i) he accredited or act as a journalist or in any other capacity for any media organisation in India;
  - (ii) provide exclusive interviews or commentaries or enter into any contractual arrangements or understandings as a result of which he agrees to provide exclusive interviews with or appearances in or on any element of any media organisation.

### **3A Medical Treatment**

3A.1 The Player shall during each Season submit promptly to such medical and dental examinations as the Franchisee may reasonably require and will undergo such treatment as may be prescribed by the medical or dental advisers of the Franchises or the Franchisee's insurers unless such advice is contrary to any previous written medical advice which the Player has received and which is still applicable in which event the Player shall be entitled to seek a second opinion in respect of any such proposed treatment from a qualified doctor approved by IPL... ..

### **4. Sponsorship and Promotional Activities**

4.1 The player grants to the Franchisee and IPL for the benefit of both the Franchisee and IPL (with the right for the Franchisee and IPL to sub-license such rights) the right during the Team to :

- (a) photograph the Player both individually and as a member of the Squad when he is involved in activities relating to the Team
- (b) film, televise, photograph, identify and otherwise record the Player and his performance during all Matches and periods ancillary thereto, including training and press conferences under the conditions set down from time to time by the Franchise and/or IPL (but no such filming shall occur in the Player's dressing room);

.... ..

- 4.2 The Player agrees with the Franchisee and IPL during each Season (i) to grant such interviews and photographic opportunities as are reasonably requested by the Franchisee and/or IPL (whether on their own behalf or on behalf of any Franchisee Partner or IPL Partner respectively (including in the case of IPL on behalf of any electronic games company); and (ii) to comply with all reasonable requests to assist the Franchisee, IPL, Franchisee Partners and/or IPL Partners to maximise their respective promotional benefits from their association with the Franchisee, Team, Squad, Payer BCCI and or IPL; and (iii) if and when requested to sign all such products as the Franchisee or IPL request including without limitation Team shirts and bats.

.... ..

- 4.4 The Player shall be entitled to refuse to provide any promotional appearance referred to in Clause 4.3 (whether during the Season or otherwise) if:
- (a) the terms of any Existing Agreement prevent him from doing so, or
  - (b) the provisions relating to the usage of the Player Identification contained in Any Central Contract prevent him from doing so in which case the Franchisee shall (to the exclusion of any other remedy) be entitled to 'reduce the Player Fee by 5% in respect of each such personal appearance.

.. ..

## **5. Team Clothing**

- 5.1 At all times when he is involved in any Team, Squad, League and/or Match related activities or engagements the Player shall :
- (a) wear and use only the Team Clothing authorised and/or supplied to him by the Franchisee; and
  - (b) not display any badge, mark, logo, trading name or message on any item of clothing, equipment or footwear without the Franchisee's prior written consent.

.... ..

## **8. Player Restrictions**

- 8.1 Subject to any International Duty and t Clause 3.1 (i) as regards the CLT20 the Player shall not during any Season without the express prior written consent of the Franchisee:

- (a) play cricket or engage in any other sport or sporting activities for any other team, club or organisation whether in India or elsewhere in the world;
- (b) take up any other employment; or be engaged or involved in any trade, business or occupation or participate professionally in any other sporting or athletic activity anywhere in the world without the prior written consent of the Franchisee."

11. From the extracts of agreement noticed above, it can be seen that the appellant is under the control and supervision of the M/s.ICL during the period of agreement. The appellant is restricted from playing cricket match for any other team. So also, it is obligatory for the appellant to inform any medical condition which affects his ability to play. The appellant has to undergo medical examination as required by M/s.ICL. Again, the appellant is under obligation to attend training, coaching etc. These terms of the contract strongly indicate that the contract is in the nature of an employment contract. Though the appellant may be an independent professional player his services are taken up by M/s.ICL for playing IPL under the team 'Chennai Super Kings'. So also, the remuneration paid to the appellant is fixed. If he is not able to play by reasons stated in the agreement, the appellant is to be compensated and thus is taken care of by M/s.ICL. Even though the appellant takes part in the promotional activities, the remuneration received remains fixed and is not based on the profit earned by M/s.ICL from such advertisements. The amount received by appellant from M/s.ICL does not depend upon the number of advertisements or promotional activities in which the appellant participates or showcases. It remains the same as fixed in

Schedule I of the Agreement. This along with the fact that M/s.ICL has control and supervision over the appellant and his play during the term of agreement strongly indicates the contract to be an employer-employee contract. In such a contract, the working relationship is defined ensuring the employer's role and his responsibilities. Generally in employment contract apart from salary and wages there may be additional benefits like insurance, retirement benefits, employee discounts etc. In the present contract, the appellant has been given an additional benefit of 10% of the player fee for doing promotional activities. This does not mean that appellant is providing brand promotion services. The appellant is hired for playing cricket under the team owned by M/s.ICL. The promotional activities are only ancillary to the work of playing cricket. The appellant is hired to play cricket and has not been hired to do only the promotional activities. The appellant being a professional cricketer, M/s.ICL has hired the appellant to play cricket which is the dominant activity of the contract. Merely because the appellant engages in some promotional activities of the employer, as part of playing cricket by way of wearing the shirt showcasing the logo and name of M/s. ICL etc., it cannot be said that the entire payment is for brand promotional activities.

12. The Tribunal in the appellant's own case while disposing a batch of cases had perused the agreement and held that it is in the nature of an employment contract. So also, in the case of *Yusufkhan Pathan and Irfankhan Pathan* vide Final Order No.A/10086-10087/2023 dt. 20.01.2023 the issue was analysed.



The Tribunal held that the relationship between the cricket player and the franchisee is that of an employer-employee relationship. This Bench in the case of *M/s.India Cements Ltd.* while considering the issue of demand of service tax on remuneration paid to foreign players had held that the contract is in the nature of employer-employee relationship and therefore the demand of service tax cannot sustain.

13. After appreciating the facts of the case and evidence placed before us and also following the decisions of the Tribunal as cited supra, we are of the considered opinion that the demand of service tax cannot sustain and requires to be set aside. The impugned order is set aside. The appeal is allowed with consequential relief, if any.

(Pronounced in court on 13.12.2023)

sd/-

**(VASA SESHAGIRI RAO)**  
Member (Technical)

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sd/-

**(SULEKHA BEEVI C.S.)**  
Member (Judicial)