(2015) 08 CESTAT CK 0010

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Appeal No. 297 Of 2012

M/s. PHO Chamber Of Commerce And Industry — APPELLANT

Vs

C.S.T., Delhi — RESPONDENT

Date of Decision : 13-08-2015

Acts Referred:
Finance Act, 1994 — Section 65(25a), 65(25aa), 65(105)(zzze), 66

Citation : (2015) 08 CESTAT CK 0010

Hon'ble Judges : G. Raghuram, J;R. K. Singh, Technical Member

Bench : Division Bench

Advocate : J.K. Mittal, Govind Dixit

Final Decision : Allowed

Judgement

1. Appeal has been filed against Order-in-Original dated 30.11.2013 in terms of which service tax demand along with interest and penalties was

confirmed under ""Club or Association Service"" [Section 65(25a) (25aa) / 65(105)(zzze) of the Finance Act, 1994] for the period 16.06.2005 to

31.03.2011.

2. Ld. advocate for the appellant during the hearing pleaded that the services were rendered to the members of the appellant and therefore its case is

covered by the judgement of CESTAT in the case of Federation of Indian Chambers of Commerce and Industry Vs. CST, Delhi [2014-TIOL-701-

CESTAT-DELHI], the judqernents of Ranchi High Court in the case ofR anchi Club Ltd. Vs. Chief Commissioner [2012 (26) STR 401 (Jhar.)]and

Gujarat High Court in the case of Sports Club of Gujarat Ltd. Vs. Union of India [2013 (31) STR 645 (Guj.)].

3. We have considered the contentions of the appellant. In respect of the services provided by the appellant to its members the issue is indeed fully

covered in favour of the appellant by GEST AT judgement in the case of FCC/ Vs. CST, Delhi (supra). Further, it is seen that Gujarat High Court in

the case of Sports Club of Gujarat Ltd. Vs. Union of India (supra) has declared that ""Section 65(25a), 65(105)(zzze) and 66 ibid incorporated/amended

by the Finance Act, 2005 to the extent that the said provisions purport to levy service tax in respect of services purporledly provided by the petitioner

club to its members, to be ultra vires. Rule is made absolute with no order as to costs"". As the taxing provision itself is held to be ultra vtres, the

impugned demand perishes.

4. For the aforesaid reasons, the impugned demand is not sustainable. The appeal is allowed.

