

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI
PRINCIPAL BENCH - COURT NO.III

Service Tax Appeal No.54027 of 2018

[Arising out of Order-in-Original No.DL-GST-WEST-COM-19-18-19 dated 31.08.2018 passed by the Commissioner, Central Tax, Delhi West Commissionerate].

M/s. M2K Entertainment (P) Ltd.,
 16, Mangalam Place, M2K Mall,
 Sector-3, Rohini,
 Delhi-110 085.

Appellant

VERSUS

Commissioner of Central Tax,
(Delhi West),
 Engineer's India Limited, Annexe Building,
 5th Floor, Bhikaji Cama Place, R.K. Puram,
 New Delhi-110 066.

Respondent

APPEARANCE:

Shri Udit Jain and Shri Vibhor Sharma, Advocates for the appellant.
 Shri Anand Narayan, Authorised Representative for the respondent

CORAM:

HON'BLE MS. BINU TAMTA, MEMBER (JUDICIAL)
HON'BLE MS. HEMAMBIKA R. PRIYA, MEMBER (TECHNICAL)

FINAL ORDER NO. 50949/2025

DATE OF HEARING: 02.06.2025
DATE OF DECISION: 02.07.2025

BINU TAMTA:

1. M/s. M2K Entertainment Pvt. Ltd.¹ is registered with the Service Tax Department for providing 'Renting of Immovable Property' services, 'Maintenance Services and Advertisement Services' under the Finance Act, 1994²

¹ The Appellant

² Act, 1994

2. As owners of a Cinema Hall/theatre namely M/s M2K Cinemas, the appellant is engaged in lending the theatre to the film Distributors/Sub-distributors for depicting the films, whose copy rights are retained back by the Distributors themselves. The Company also provides various other facilities such as manpower to manage, control and make arrangements; projectors and other related equipment to screen the films; arrange power supply and provide the facilities to collect box office collections arising for screening the films owned/and provided by film Distributor/Sub-distributors. These facilities were provided under the provisions of mutual agreements between the appellant and the film Distributors/Sub-distributors (herein after referred to as the Distributors).

3. As per investigation conducted by the Department for the period 1.4.2009 to 31.03.2015, it was found that the appellant had short paid/not paid service tax on 'Renting of Immovable Property' on screening of film, share of Net Box Office Collection³, transfer of copyright and admission of entertainment. Show cause notice dated 20.10.2014 for the period 2009-10 amounting to Rs.3,57,37,074/- + Rs.25,37,265/- , show cause notice dated 21.04.2015 for the period 2013-14 amounting to Rs.82,21,912/- + Rs. 2,62,627/- and show cause notice dated 01-04-2016 for the period 2014-15 amounting to Rs.85,51,638/- + Rs.3,14,451/- were issued to the appellant. All the three show cause notices were adjudicated and by the impugned order ⁴, the Commissioner confirmed the demand of service tax amounting to Rs.5,25,10,624/- along with interest and penalty. The proposal for recovery of Cenvat Credit was rejected and the appellant was held

³ NBOC

⁴ Order-in-Original No.DL-GST-WEST-COM-19-18-19 dated 31.08.2018

entitled to claim the Cenvat Credit. The learned Commissioner relied on the para-5 of Circular No.148/17/2011-ST dated 13.12.2011 regarding the clarification on levy of service tax on distribution or sub-distribution of films and exhibitors of movie. It was, therefore, concluded that the appellant is an owner of the theatre, which is used for screening of the films and the theatre is given out on rent. The appellant receives consideration of value in lieu of renting out or leasing out of their theatre or building to another person being the distributor. In respect of other services, viz. maintenance and advertisement, the Commissioner was of the view that where bunch of different services are provided, only that service would prevail over the other services of that bunch which bears the most specific description or essential character of services and which yields the highest level of service tax and in the present case, it is the 'Renting of Immovable Property Services' which gives essential character and, therefore, all other services can be clubbed together under this head for the purpose of classification under Section 66F of the Act. Being aggrieved, the appellant has preferred the present appeal before this Tribunal.

4. Having heard both the sides and perused the records of the case, we find that the issue involved in the present appeal is basically whether the appellant has rendered the services of 'Renting of Immovable Property' by screening/exhibiting the films in their theatre. The learned counsel for the appellant has submitted that the issue is no longer *res integra* and such an arrangement between the distributor/producer and an exhibitor of film has been examined by this Tribunal in series of decision. The Bench rejected the contentions of the Department that the agreement was for 'Renting of Immovable Property' as defined under Section 65(90a) of the Act and it was held that the assessee did not provide any service to the distributor nor the

distributor made any payment to the appellant as consideration for the alleged service rather it was the appellant who paid the money to the distributor for the Screening Rights conferred by them on the appellant.

5. The learned Authorised Representative for the Revenue fairly agreed that the issue is covered by the decisions of this Tribunal.

6. Considering the agreement between the appellant with M/s. UTV, it is apparent from Clause 1 that the distributor grants Theatrical Exhibition Rights of the film to the appellant which implies that Theatrical Exhibition Rights are transferred by the distributor to the appellant. From the submissions of the appellant, we find that the film distributors entered into an agreement with the appellant to screen the movie in the theatre under two different situations i.e.:

- A. Agreement where right/license to exhibit the film is granted to the exhibitor by the distributor for specified number of shows and period; and,
- B. Agreement where theatrical exhibition rights in perpetuity to exhibit the films are guaranteed;

7. In the second case, the appellant would make payment to the distributor for the grant of the rights to screen the films and the payments were described as 'Theatre Shares', 'Fixed Hire', 'Theatre Hire', which was specified percentage of the NBOC.

8. In the case of **Moti Talkies Vs. Commissioner of Service Tax, Delhi-I**⁵, the Principal Bench considered the agreements entered into between the distributor and the appellant being an exhibitor for screening pictures, which was alleged by the Revenue to be an agreement for 'Renting

⁵ 2021 (45) GSTL 167 (Tri.-Delhi)

of Immovable Property' as defined under Section 65(90a) of the Act. On the basis of the agreement between the parties, the Bench concluded that it is difficult to even visualise that the appellant is providing his service to the distributor by renting of property or even any other service in relation to such renting. It was held that the agreements executed confer rights upon the appellant to screen the film for which the appellant is making payment to the distributor and not the distributor making any payment to the appellant. Considering the provisions of Section 65(90a) defining "Renting of Immovable Property" read with "taxable service" under Section 65 (105) (zzzz) prior to July 1, 2012 and provisions of Section 65B (41), which defined 'renting' during the subsequent period from July 1, 2012 to March 21, 2014, it was observed that the appellant has not provided any service to the distributors, nor distributors have made any payment to the appellant as consideration for the alleged service and hence no service tax is leviable. In the present case also, the period involved is 2009-2015 which falls within the pre-negative era as well as during the post-negative and therefore, the observations made in the case of **Moti Talkies** would be squarely applicable. The Revenue has not been able to establish that the appellant had received any consideration from the distributor and in the absence thereof, no service can be said to have been provided by the appellant. The decision in **Moti Talkies** has been subsequently followed by the Tribunal in:

- "1) Asian Art Printers (2020) 12 TMI 1012 –CESTAT New Delhi,**
- 2) Shri Vinay Kumar (2020) 11 TMI-436-CESTAT, New Delhi,**
- 3) Golcha Properties [2021] 86 GSTR 42 (CESTAT-New Delhi); (2020) 11 TMI 137 –CESTAT, New Delhi and**
- 4) Satyam Cineplexes Ltd. (2020) 8 TMI 1222 –CESTAT, New Delhi."**

9. The three Member Bench of the Tribunal in **M/s. INOX Leisure Ltd versus Commissioner of Service Tax, Hyderabad** ⁶ once again considered similar agreements between the producer/distributor of the films and the exhibitor who owns/operates chain of Multiplex theatres during the period, May 2009 to March 2012, to examine the issue whether the activity carried out by the appellant would be exigible to service tax under 'Business Support Service'. The Bench took note of the principle that a revenue sharing arrangement does not necessarily imply provision of services, unless the service provider and service recipient relationship is established as enunciated by the Tribunal in **Mormugao Port Trust Vs. Commissioner of Customs, Central Excise & Service Tax, Goa**⁷, which was affirmed by the **Apex Court** ⁸ and held that the demand of service tax is unsustainable. The observations of the Tribunal are as under:

"18. What also needs to be noticed is that if the appellant was providing such a service, it would be the producers/distributors who would be making payments to the appellant, but what comes out from a perusal of clause 5.1 of the agreement is that in consideration for the distributor agreeing to grant to the appellant the licence to exploit the theatrical rights of a motion picture, the appellant would have to pay such revenue share to the distributor as provided for in the said clause. In fact, clause 3.1 of the agreement provides that distributor agreed to grant to the appellant the non-exclusive license to exploit the theatrical rights of a motion picture during the term."

In the said decision, the Tribunal considered the Circular issued by the CBEC dated February 23, 2009, clarifying that, "screening of a movie is not a taxable service except where the distributor leases out the theatre and the theatre owner gets a fixed rent. In such case, the service provided by the

⁶ 2022 (60) GSTL 326 (Tri-Hyd.)

⁷ 2017 100 VST 120 (CESTAT-Mum)

⁸ 2018 (19) GSTL J118 (S C)

theatre owner would be categorised as 'renting of immovable property for furtherance of business or commerce' and the theatre owner would be liable to pay tax on the rent receipt from the distributor. The facts of each case and the terms of contract must be examined before a view is taken." The subsequent Circular dated December 13, 2011 was also taken into account in arriving at the conclusion that it will not come to the aid of the Department. The appeal filed by the Revenue in the case of **INOX Leisure Limited**, was dismissed by the **Supreme Court** ⁹

10. What emerges from various decisions is that the owner of the Multiplexes/theatres exhibits the films and for getting the films exhibited in their theatre, they enter into agreements with the film distributors/producers for which the owner of the theatre agrees to pay certain amount to the distributors generally fixed as a percentage of the NBOC. The purpose of the agreement and the intention of the parties is for screening of the film in the theatre, which cannot be treated as 'Renting of Immovable Property Service'. Moreover, the element of consideration, i.e. the *quid pro quo* for services, which is a necessary ingredient of any taxable service is absent. The revenue has not been able to establish the service provider and service recipient relationship between the appellant and the distributor, **(Mormugao Port Trust)**. Consequently, no service tax can be levied on the appellant.

11. The learned Commissioner has taken the view that the copyrights were not transferred or sold to the appellant but only permission for screening the film with other terms and conditions as per the agreements has been

⁹ 2022 (98) GSTR 444.

given, therefore, the taxability is on the part of the appellant for the payments they have received in the guise of theatre hire, fixed hire and percentage of NBOC and not on the part of the distributor as claimed by the appellant. In this regard, the appellant has relied on the provisions of Indian Copy Right Act, 1957. Section 14 Clause (d) of the Copy Right Act provides for the giving of copyright in case of cinematograph film, which is as under:-

“Section 14: For the purposes of this Act, “copyright” means the exclusive right subject to the provisions of this Act, to do or authorise the doing of any of the following acts in respect of a work or any substantial part thereof, namely

.....

.....

(d) In the case of cinematograph film, -

(i) to make a copy of the film, including a photograph of any image forming part thereof;

(ii) to sell or give on hire, or offer for sale or hire, any copy of the film, regardless of whether such copy has been sold or given on hire on earlier occasions;

(iii) to communicate the film to the public;”

12. The very fact that the appellant have been exhibiting the films in their theatre implies that the right in the film was transferred to the appellant to screen the film in the theatre and thereby the appellant is engaged in communicating the film to the public. The sub-clause (iii) of Clause (d) of Section 14 of the ‘Copyright Act’ requires the exhibition of film to the public at large, which we find has been satisfied by the appellant. The appellant after receiving the right to screen the film either temporarily or permanently

exhibits the film to the public at large. The act of the appellant would squarely come under the purview of Section 14(d)(iii).

13. Service tax was levied on 'Intellectual Property Services' w.e.f. 10.09.2004, however copyright was excluded from the definition of 'Intellectual Property Rights'. The Finance Act, 2010 levied service tax on transferring temporarily/permitting the use or enjoyment of any copyright except the right covered under Section 13(1)(a) of the Copyright Act. Services of copyright are taxable w.e.f. 01.07.2010 under sub-clause (zzzzt) of clause (105) of Section 65 as under:-

“Taxable service” means any service provided or to be provided to any person, by any other person, for -

- (a) transferring temporarily; or
- (b) permitting the use or enjoyment of,

any copyright defined in the Copyright Act, 1957, except the rights covered under sub-clause (a) of clause (1) of Section 13 of the said Act.”

The Finance Act, 2012 introduced 66B as the new Charging Section w.e.f. 1.7.2012 levying service tax on all services other than those specified in the Negative List. Notification No.25/2012 in Entry No.15 provided the exemption as under:-

“Temporary transfer or permitting the use or enjoyment of a copyright covered under clause (a) or (b) of sub-section (1) of Section 13 of the Indian Copyright Act relating to original literary, dramatic, musical, artistic works.”

Further, amendment was introduced in the above Notification w.e.f. 01.04.2013 and Entry No.9 was substituted as under:-

“Services provided by way of temporary transfer or permitting the use or enjoyment of copyright-

- (a) covered under clause (a) of sub-section (1) of Section 13 of the Copy-right Act, 1957, relating to original literary, dramatic, musical or artistic works; or
- (b) of cinematograph films for exhibition in a cinema hall or cinema theatre.”

14. In view of the above legal provisions, CBEC issued Circular No.109/3/2009-ST dated 23.02.2009. The relevant extracts of the Circular is reproduced below:-

"(3) In the light of above, it is clarified that screening of a movie is not a taxable service except where the distributor leases out the theatre and the theatre owner get a fixed rent. In such case, the service provided by the theatre owner would be categorized as 'Renting of immovable property' for furtherance of business or commerce' and the theatre owner would be liable to pay tax on the rent received from the distributor. The facts of each case and the terms of contract must be examined before a view is taken."

Subsequently, CBEC issued another Circular No.148/17/2011-ST dated 13.12.2011. As per the Circular, where distributor or sub-distributor transfers the rights to exhibitor or theatre owner, the distributor or sub-distributor is liable to collect the service tax under 'Copyright Service' & deposit it with the Government exchequer. The relevant extracts of the Circular is reproduce below:

"3. The normal business practice in the industry is that the producer of the film, who owns the intellectual property rights of the film, temporarily transfers the rights to a person [normally distributor or any other person] who directly or indirectly enters into an agreement with the exhibitor [normally theater owner] for screening of the film. There are also other variant modes of transaction in the industry.

4. In cases where distributor transfers the rights to sub-distributor, area distributor, exhibitor or theatre owner, the distributor is liable to collect the service tax under copyright service & deposit it with the government exchequer. Similarly when the sub-distributor or area distributor etc further transfers the rights to any person, he is also liable to collect the service tax under copyright service & deposit it with the government exchequer."

It is a settled principle of law that the Circulars are binding on the Department. There is no scope for deviation from the aforesaid Circulars which in clear terms imposes the liability to pay service tax on the distributor. Therefore, the service tax is to be levied and paid by the distributor under 'Copy Right Service' for transfer of right by licence to screen the film in the theatre of the appellant.

15. A Division Bench of the Madras High Court in **AGS Entertainment Private Limited versus Union of India**¹⁰ considered the challenge to the virus of the provisions of section 65(105)(zzzzt) of the Act, bringing within the ambit of 'service tax', certain forms of income generated from "temporary transfer of permitting the use or enjoyment" of, any copyright as defined in the Copyright Act. The Court observed that the exclusive right of copyright ordinarily vests with the producer of the film and the distributor only gets few positive prints or cubes of the picture for the exhibition of the picture. It is a temporary transfer of copyright or permitting its use or enjoyment for the limited period and in the specified area. The producer is the service provider and the lessee is the recipient of the service and service tax is leviable on such temporary transfer or permitting use or enjoyment. The Court accepted the submission that there are different types of arrangements to transfer exhibition rights via exhibition contracts, Theatre Hire, Fixed Hire, Minimum Guarantee plus Royalty, and Revenue Share. The Court observed that in the first category, the profit or loss from exhibiting the film is borne by the distributor. In such a case, the theatre owner provides the "taxable service" within the meaning of Section 65 (105)(zzzz) – "Renting of the immovable property" for furtherance of business or commerce". Depending upon the terms of the agreement, the

¹⁰ 2013 (32)STR 129 (Mad.)

theatre owner also renders “operational or administrative assistance” and liable to pay service tax and respect of renting of Vimal property and also other “operational and administrative assistance”. Reference was made to the Circular dated 13.12.2011, clarifying the levy of service tax on distributors/sub distributor of films and exhibitors.

16. In view of the discussion above, the reasoning given by the Commissioner in the impugned order for levy of service tax on the appellant is unsustainable. We, therefore, do not find any merits in the impugned order and hence, the same is set aside. The appeal is, accordingly, allowed.

[Order pronounced on 2th July, 2025]

(BINU TAMTA)
Member (Judicial)

(HEMAMBIKA R.PRIYA)
Member (Technical)

Ckp.