

2024 (390) E.L.T. 629 (S.C.)

IN THE SUPREME COURT OF INDIA

B.V. Nagarathna and Nongmeikapam Kotiswar Singh, JJ.

FUTURE GAMING AND HOTEL SERVICES PVT. LTD.

Versus

UNION OF INDIA

Civil Appeal No. 4291 of 2013, decided on 18-9-2024

Business auxiliary service - Promotion and marketing of Lotteries of State Government - Refund of tax paid under protest - Service tax was levied under Business Auxiliary Service (BAS) which assessee challenged - In this case, although impugned order was in favour of assessee inasmuch as High Court had held that service tax was not leviable on aforesaid service - Refund was allowed prospectively with effect from 1-7-2010 - Assessee pleaded that they had paid service tax under protest throughout and, hence, were eligible for refund for past period also - In subsequent development, assessee had filed a review petition before High Court which was allowed and impugned order was amended by correcting error apparent on record - In amended order, prospective operation of impugned order was recalled and complete relief was given to assessee - In view of aforesaid, assessee's present appeal, required no further consideration and, hence, was to be disposed of accordingly - Section 65(105)(zzb) read with Section 65(19) of Finance Act, 1994 - Section 11B of Central Excise Act, 1944 as made applicable to Service Tax matters vide Section 83 of Finance Act, 1994. *[paras 1 to 7]*

Appeal disposed of in favour of department

CASE REVIEW

Future Gaming Solutions Pvt. Ltd. v. Union of India — 2015 (37) S.T.R. 65 (Sikkim) — **Affirmed**
[Paras 1, 3, 4, 5]

REPRESENTED BY : S/Shri S. Ganesh, Sr. Advocate, N. Venkataraman, A.S.G., Ms. Surbhi Swaria, Suresh Kumar, Dhananjay Kataria, Mrs. Mahima C. Shroff, Anand Thumbayill, H.R. Rao, V.C. Bharathi, Udai Khanna, B.K. Satija, Sarthak Karol, A.R. Madhav Rao, Aakash Nandolia, Ms. Sagun Srivastava, Ms. Kriti Gupta, Ms. Asmita Singh, Tushar Nair, Anirudh Anand, Punishk Handa, Ayushi Bansal, Rahul Kumar, Aryan Srivastava, Aakash Thakur, Sarthak Dora and Ms. Ayushi Bansal, Advocates and B. Krishna Prasad, Raj Bahadur Yadav, Ms. Rohini Musa, Chirag M. Shroff, Mukesh Kumar Maroria, Gurmeet Singh Makker, Arjun Garg, Gautam Narayan, Mukunda Rao Angara, M/s. Arputham Aruna and Co., Sameer Abhyankar, AORs, for the Appearing Parties.

[Order]. - Learned Counsel for the Union of India and Learned Senior Counsel appearing for the Assessee submitted in unison that as against the judgment dated 29-11-2012 passed by the High Court of Sikkim, both the Union of India as well as the Assessee filed their respective appeals. The reason for Union of India filing its appeal was on account of the fact that the judgment was in favour of the Assessee, although, the said matter pertain to the period post 2010. However, the

reason as to why the Assessee filed its appeal is owing to the fact that the judgment of the Sikkim High Court dated 29-11-2012 was given a prospective operation on account of the fact that the Assessee had secured registration and had paid that service tax under the impugned provisions on their own.

2. Learned Senior Counsel for the Assessee, however, submitted that the payment of the service tax was under protest as the very provisions were under challenge before the High Court.

3. Subsequently, the Assessee filed Review Petition Nos. 1 and 2 of 2013 before the Sikkim High Court. The said review petitions were allowed and it was observed that what was stated in paragraph 21 of the original judgment dated 29-11-2012 was an error apparent on the face of the record. Consequently, paragraph 21 of the judgment dated 29-11-2012 was substituted as under :

“18. We, therefore, have no hesitation to hold that paragraph 21 of the judgment calls for a review and is accordingly reviewed as being “an error apparent on the face of the record.” Consequently, paragraph 21 of our judgment dated 29-11-2012 shall stand substituted as under :-

Since the petitioners secured registration and paid service tax under the impugned provision under protest and that this Court by its Order dated 7-6-2011 in W.P. (C) No. 23 of 2011 had made clear “that any levy or payments made under the Legislation under challenge shall be subject to the outcome of this writ petition”, the Petitioners shall be entitled to refund of the amount of service tax paid by them under the impugned Clause with effect from 1-7-2010 as prayed for in paragraph (c) of W.P. (C) No. 23 of 2011 and paragraph (iii) of W.P. (C) No. 36 of 2011.

Save as above, the rest of the judgment shall remain unaltered.”

4. Consequently, the prospective operation of the judgment dated 29-11-2012 was recalled and complete relief was given to the Assessee.

5. Learned Senior Counsel for the Assessee submitted that in view of order passed by the High Court in the review petitions, its appeal would no longer survive for further consideration and accordingly may be disposed of .

6. The submission of Learned Senior Counsel Shri S. Ganesh is placed on record.

7. In view of the aforesaid developments, this civil appeal would not survive for further consideration and accordingly stands disposed of.

8. Pending application(s) shall stand disposed of.