

No service tax liability on license fee and other fee for grant of liquor license

The Hon'ble CESTAT Bangalore, in *M/S. Anheuser Busch Inbev India Ltd. v. Commissioner of Central Tax [Service Tax Appeal No. 20374 of 2020, decided on February 18, 2021]* held that no service tax under reverse charge mechanism is payable on the license fee and other application fee paid to the State Excise department for grant of liquor license. Further, confirmed the Service tax demand on Storage License fee for CO2 which the Appellant is liable to pay along with interest.

Facts:

M/S. Anheuser Busch Inbev India Ltd. ("**the Appellant**") is engaged in manufacture and sale of alcoholic beverages. Pursuant to the enquiry initiated by the Directorate General of Central Excise Intelligence, Bangalore ("**DGCEI**"), a Show Cause Notice dated June 18, 2018 ("**SCN**") was issued to the Appellant, inter alia, demanding Service tax of INR 17,77,85,108/- under reverse charge mechanism on the certain amount paid towards license fee and other application fee (including Export Pass fee, Import Pass fee, Permit fee, Excise Staff Salary and overtime allowances/charges etc.) to the State Excise department for grant of liquor license. It alleged that the fees paid by the Appellant are with respect to the purported service provided by the State Government for which the Appellant is liable to pay Service tax under reverse charge mechanism on same.

Thereafter, the Commissioner ("**the Respondent**"), vide order dated March 18, 2020, confirmed Service tax demand of INR 4,89,95,805/- with respect to Export Pass fee and Import fee, Storage License Renewal fee, Excise Staff Salary & Overtime charges and Permit fee paid to the State Excise department. Further, dropped the demand with respect to Brewery License Fee, Bond Registration Renewal Fee, Factory License Renewal Fee, Brand Registration Fee, Barcode Fee, Bottling Fee and Appeal Filing Fee.

Aggrieved by the Service Tax demand confirmed by the Respondent, the Appellant has filed the present appeal.

Issue:

Whether the Appellant is liable to pay Service tax on the license fee and other application fees charged for grant of liquor license paid to State Excise department?

Held:

The Hon'ble CESTAT Bangalore, in ***Service Tax Appeal No. 20374 of 2020, decided on February 18, 2021*** held as under:

- The Respondent has wrongly considered the fee paid by the Appellant to the State Excise department and various other Government departments/agencies as having an element of a quid pro quo in it and hence as a service provided by the State Excise department. Noted that, the fee charged for grant of license is not a consideration for service, but a price charged for “exclusive privilege” parted by the State, the export fee does not have an element of service and therefore not a service and accordingly not subject to levy of Service tax.
- Noted that, the GST Council in its 26th meeting on March 10, 2018 has recommended that GST was not leviable on license fee and application fee, “by whatever name called”, payable for alcoholic liquor for human consumption and that this would apply mutatis mutandis to the demand raised by the Service tax/Excise authorities on license fee for alcoholic liquor for human consumption in the pre-GST era i.e., for the period from April 2016 to June 30, 2017. Specific inclusion of word “by whatever name called”, the Legislature made it abundantly clear that any fee paid under the purview of State Excise legislation would not be leviable to Service tax.
- Observed that, in August, 2019, the Finance Act, 2019 (“**Finance Act**”) was enacted amending Section 66B of the Finance Act, 1994 and pursuant to the retrospective amendment vide Section 117 of the Finance Act, it became even more clear and the dispute regarding the leviability of Service tax on fee paid to State Government in relation to alcoholic liquor for human consumption has come to an end.
- Held that, the Appellant is not liable to pay Service tax on Export Pass fee, Import Pass fee, Permit fee, Excise Staff Salary and overtime allowances/charges and set aside the demand on all these services.
- Further, held that the Appellant is not liable to pay penalties in view of the fact that demand itself is not sustainable.

- Upheld the Service tax demand only on Storage License fee for CO2 and held that, it cannot be considered as fee paid towards grant of liquor license and the Appellant is liable to pay tax along with interest.
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Relevant Provisions:

Section 66B of the Finance Act, 1994:

“Charge of service tax on and after Finance Act, 2012.

66B. There shall be levied a tax (hereinafter referred to as the service tax) at the rate of fourteen per cent. on the value of all services, other than those services specified in the negative list, provided or agreed to be provided in the taxable territory by one person to another and collected in such manner as may be prescribed.”

Section 117(1) of the Finance Act:

“117. Special provision for retrospective exemption from service tax on service by way of grant of liquor license

(1) Notwithstanding anything contained in Section 66B of Chapter V of the Finance Act, 1994 as it stood prior to its omission vide Section 173 of the Central Goods and Services Tax Act, 2017 with effect from the 1st day of July, 2017 (hereinafter referred to as the said Chapter), no service tax shall be levied or collected in respect of taxable service provided or agreed to be provided by the State Government by way of grant of liquor licence, against consideration in the form of licence fee or application fee, by whatever name called, during the period commencing from the 1st day of April, 2016 and ending with the 30th day of June, 2017 (both days inclusive).”

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