

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
ALLAHABAD**

REGIONAL BENCH - COURT NO.I

Service Tax Appeal No.70083 of 2017

(Arising out of Order-in-Original No.LKO/EXCUS/000/COM/ST/012-013/2016-17 dated 24/11/2016 passed by Commissioner of Central Excise & Service Tax, Lucknow)

M/s Anu Image Makers Advertising Co. Pvt. Ltd. Appellant
(54, Hazratganj, Lucknow)

VERSUS

Commissioner of Central Excise &

Service Tax, Lucknow

....Respondent

(7-A, Ashok Marg, Lucknow)

APPEARANCE:

Shri Dharmendra Kumar, Chartered Accountant for the Appellant
Shri Sandeep Pandey, Authorised Representative for the Respondent

**CORAM: HON'BLE MR. P.K. CHOUDHARY, MEMBER (JUDICIAL)
HON'BLE MR. SANJIV SRIVASTAVA, MEMBER (TECHNICAL)**

FINAL ORDER NO.70125/2024

DATE OF HEARING : 23 November, 2023
DATE OF PRONOUNCEMENT : 12 March, 2024

SANJIV SRIVASTAVA:

This appeal is directed against Order-in-Original No. LKO/EXCUS/000/COM/ST/012-013/2016-17 dated 24/11/2016 passed by Commissioner of Central Excise & Service Tax, Lucknow. By the impugned Order following has been held:-

ORDER

- 1. The demand to the extent of Rs.1,02,51,252/- (One Crore, two lacs, fifty one thousand two hundred and fifty two) raised against SCN No.08/Commr/LKO/ST/2015-16 dated 06.05.2015 is confirmed and shall be recovered from the party. Interest at appropriate rate under Section 75 of the*

Finance Act, 1994 also be recovered from M/s Anu Image Makers Advertising Co. Pvt. Ltd. 54 Harzratganj Lucknow.

2. *I impose Penalty of Rs 1,02,51,252/- (One Crore, two lacs, fifty one thousand two hundred and fifty two) under Section 78(i) of Finance Act, 1994.*
3. *I impose penalty of Rs 10,73,910/- under Section 76 of F.A. 1994 as was applicable for the period 2007-08.*
4. *I impose penalty of Rs 10000/- under Section 77(i) of Finance Act, 1994 for non submission of list of records & accounts.*
5. *I impose penalty of Rs 1,50,000 (Rs 10000*15 ST-3 returns) under Section 77(2) of Finance Act 1994 for not filing proper ST-3 returns in violation of provision of Section 65 & 70 of the Finance Act, 1994 ibid.*
6. *The demand to the extent of Rs 20,91,205/- (Rs twenty lacs ninety one thousand two hundred and five) raised against statement of demand No. 07/ADC/LKO/ST/2016-17 dated 07.04.2016 is also confirmed & shall be recovered from the party. Interest at appropriate rate under section 75 shall also be covered.*
7. *I also impose penalty of Rs.2,09,120/- under section 76 read with section 78(B) of the Finance Act, 1994.*
8. *I also imposed penalty of Rs 20,000/- (Rs 10,000/- for each return) under section 77(2) for non filing of ST-3 return for the period 2014-15."*

2.1 Appellants are registered with the Service Tax Department for providing taxable services under the category of 'Advertisement Agency Services'. However, on going through the nature of services undertaken by the party, revenue was of the view that the services provided by the appellant were more appropriately covered under the category of 'Business Auxiliary Service' and the appellant was required to registration accordingly, which was not done by them.

2.2 Intelligence was received that appellant was not disclosing the correct figure of received amount in ST-3 returns, thus suppressing the huge amount of taxable value resulting in massive evasion of due service tax.

2.3 On comparison of balance sheets with corresponding ST-3 returns, it revealed that the gross receipt shown in balance sheets was much higher than the receipts shown in corresponding ST-3 returns. As the appellant is not engaged in any other activity, which would result in these receipts and no convincing reason was given by the appellant to explain the difference between these two. Revenue was of the view that the appellant had suppressed the value of taxable services reflected in ST-3 return with intent to evade payment of service tax.

2.4 Show cause notice dated 06.05.2016 was issued to the appellant, asking them to show cause as to why-

- (i) *The service tax of Rs.1,02,51,252/- (one crore two lakhs fifty one thousand two hundred fifty two), including Edu. Cess and Secondary and Higher Edu. Cess, only, should not be demanded and recovered from them under first proviso to sub-section (1) of Section 73 of the Finance Act, 1994.*
- (ii) *Interest under Section 75 of the Finance Act, 1994 should not be demanded from them on the confirmed amount of demand;*
- (iii) *Penalty should not be imposed under Section 76 of the Finance Act, 1994, for their various acts of omission and commission, as discussed in earlier paras;*
- (iv) *Penalty should not be imposed under Section 77 of the Finance Act, 1994, for their various acts of omission and commission, as discussed in earlier paras;*
- (v) *Penalty should not be imposed under Section 78 of the Finance Act, 1994, for their various acts of omission and commission, as discussed in earlier paras;*

2.5 Subsequently, a statement of demand dated 07.04.2016 was issued to the appellant under Section 73 (1A) of the Finance Act, 1994, asking them to show cause as to why-

- (i) *An amount of service tax amounting to Rs 20,91,205/- including Ed. Cess and S.H. Ed. Cess for the period 2014-15 should not be demanded and recovered from them under Section 73(1) of Finance Act, 1994 for violation of section 68 of the Act read with section 66/66B and rule 6 of Service tax Rule, 1994.*
- (ii) *Interest should not be levied and recovered at applicable rate on the above amount of service tax including Ed. Cess and S.H. Ed. Cess under Section 75 of Finance Act, 1994.*
- (iii) *Penalty should not be imposed upon them under Section 76 Finance Act, 1994 for non-payment of service tax in accordance with the provisions of Section 68 of Finance Act, 1994 read with section 66/66B and rule 6 of Service tax Rule, 1994.*
- (iv) *Penalty should not be imposed upon them under Section 77(2) of Finance Act, 1994 for non filing of service tax return."*

2.6 Show cause notice and the statement of demand have been adjudicated by the impugned order referred in para-1 above. Aggrieved appellant has filed this appeal.

3.1 We have heard Shri Dharmendra Kumar learned Chartered Accountant appearing for the appellant and Shri Sandeep Pandey learned Authorised Representative appearing for the revenue.

3.2 Arguing for the appellants learned Chartered Accountant submits that-

- The issue involved in the present case is the classification of the services provided by the appellant.
- Appellant claimed that the services provided by them are sale of space for advertisement in print media whereas revenue seeks to classify the same under 'Business Auxiliary Service'.

- Undisputedly appellant has provided the service of sale of space in print media, to specify the same they are producing-
 - Sample Bills issued for sale of space for advertisement in print media by newspaper agencies in the name of appellant for printing the advertisement of the clients of appellant in their newspaper.
 - Corresponding sample bills issued by the appellant for sale of space in print media to their clients.
- Sale of space for advertisement came into service tax vide Notification No.15/2006-ST dated 24.04.2006 w.e.f. 01.05.2006, after interaction of negative list regime of taxes w.e.f. 01.07.2012. Section 66D(g) of the Finance Act brought selling of space or time slots for advertisement other than advertisements broadcast by radio or television under negative list. Consequently, selling of space in print media was remained non-taxable.
- Appellant sold space in print media during the disputed period on principal to principal basis. It issued invoices to its customers in its own name and collected the sale price for its own. Thus, his services fall under the category of 'Sale of Space or time for advertisement in print media'.
- When these services are covered by the specific category of services then the classification under specific category will prevail over general category that of 'Business Auxiliary Services'.
- Newspaper Agencies sold their space for advertisement in their print media at a discount to the appellant, which ranges from 10% to 15% of advertisement tariff as his advertisement from the invoices issued by the said news paper agencies. Appellant in turn sold that spaces to various advertisers at the tariff notified by the newspaper agencies 10% or 15% at the discount received by them from news paper agencies, was a trade discount and not commission from the newspaper agencies to the appellant.

Activity undertaken by the appellant is neither promotion of sale nor marketing of goods or promoting the provision of the services to their client. Sale of space by the appellant to their client is an independent transaction and purchase of the same other than the purchase of the space by them from the newspaper agencies. From the records of the appellant.

- it is evident that net margin between sale of space and purchase of said space ranges between 3.78% to 7.24%.
- Whereas department has estimated income of appellant on the business of sale of space for advertisement in print media at 15%. During the same period this fact has laid to this demand.
- The issue involved in the present case has been considered by Hyderabad Bench of this Tribunal in the case of M/s Varadhi Advertisers Pvt. Ltd. Final Order No.A/30613-30168/2023 dated 04.07.2023 and has been settled in favour of the assessee.
- In view of the above, the appeal needs to be allowed.

3.3 Arguing for the revenue learned Authorised Representative reiterates the facts recorded in the impugned order.

4.1 We have considered the impugned orders along with the submissions made in appeal and during the course of argument.

4.2 Commissioner has in the impugned order framed following issues for consideration:

- 1) *Whether party is indulged in providing "business Auxiliary Service" or "Advertising Agency Service" or "sale of Space or time slot for Advertisement Service".*
- 2) *Whether quantification of Service Tax demand is correct.*
- 3) *Whether Services provided by the party are exempted after introduction of Section 66D of the F A 1994 w.e.f. 01.07.2012.*
- 4) *Whether invocation of extended period beyond 5 years is legal & proper.*

- 5) *Whether party is liable to Penal action for their various acts of omission & commission.*

On the merits of the demand the issue listed at SI No 1 & 3 need to be answered in the first instance. Other issues listed at S No 2, 4 & 5 are offshoots that will arise only if we are in agreement with the findings recorded by the Commissioner on these issues.

4.3 Commissioner has recorded following findings in the impugned order:-

"From the above discussion it is clear that services provided by the party do not fall under the category of " Sale of space or time slot for advertisement". Now it is to be decided in between "Advertising agency service" & "Business Auxiliary Service". Sec. 65A(2) of F.A. 1994 says that when for any reason a taxable service is prima facie, classifiable under two or more sub clauses of clause(105) of Sec. 65(A) classification shall be effected as follows-

- (a) the sub-clause which provides the most specific description shall be preferred to sub- clause providing a more general description;*
- (b) composite services consisting of a combination of different services which can not be classified in the manner specified in clause(a), shall be classified as if they consisted of a service which gives them their essential character, insofar as this criterion is applicable;*
- (c) when a service cannot be classified in the manner specified in clause (a) or clause(b) it shall be classified under the sub-clause which occurs first among the sub clause which equally merit consideration.]*

Party is an advertising agent therefore as per above clause (a) services provided by the party falls under the category of "Advertising Agency Service" But at the same time party is a commission agent too. In this regard it should be kept in mind that party is not getting any consideration in lieu of services provided to the advertiser. What they get is the

commission from the media. Therefore as per above state clause (b) services provided by the party falls under the category of BAS as commission gives them their essential character. Therefore I found that demand of Service Tax from the party under B.A.S is correct & proper.

I found that by the Finance Act 2012, radical changes have been made in the Finance Act, 1994 by providing that service tax is payable on all services rendered in taxable territory except for "negative list" of service specified in Section 66D. Thus w.e.f. 01.07.12 service tax has become leviable on all the services which satisfy the definition of service inserted with effect from that date, except those specified under 66D. Accordingly vide circular No. 161/12/2012 dated 06.07.2012 accounting code for the purpose of payment of service tax under the negative list based comprehensive approach to taxation of service effective from 01.07.2012 [all taxable services - 00441089] was prescribed. However subsequently vide circular No. 165/16/2012 dated 20.11.2012 a list of 120 description of services for the purpose of registration & accounting code corresponding to each description of service for payment of tax was provided. But it was specified in the circular itself that description of taxable services given are solely for the purpose of statistical analysis.

As per Section 66B of Finance, Act 1994 there shall be levied a tax (here in after referred to as the service tax) at specified rate on the value of all services, other than those specified in the negative list provided or agreed to be provided in the taxable territory by one person to another and collected in such a manner as may be prescribed. The term taxable service is defined in Section 65B(51) of the Act as "any service on which service tax is leviable under section 66B. The term service has been defined in section 65B (44) as follow

"service" means any activity carried out by a person for another for consideration, and includes a declared service, but shall not include-

- (a) an activity which constitute merely:-*
 - (i) a transfer of title in goods or immovable property, by way of sale, gift or in any other manner; or*
 - (ii) such transfer, delivery or supply of any goods which is deemed to be a sale within the meaning of clause (29A) of article 366 of the constitution; or*
 - (iii) a transaction in money or actionable claim;*
- (b) a provision of service by an employee to the employer in the course of or in relation to this employment;*
- (c) fees taken in any Court or tribunal established under any law for the time being in force*

Therefore w.e.f. 01.07.2012 definition of specific service became irrelevant and any activity carried out by a person for another for consideration is taxable under service tax. As discussed above activity of the party do not fall under any of the category given under section 66D & therefore is taxable; whatever it may be as per definitions applicable upto 30.06.2012

Now I come to 2nd issue

On going through the above submission made by the party, I found that the following issues are to be considered:-

- 1. Whether services in respect of advertisement at DAVP rate are exempted.*
- 2. Whether Commission accrued on work of screen printing is taxable or not.*
- 3. Whether gross amount of Commission accrued in respect of advertisement at commercial rates or net income from said commission is taxable.*

Party has inter-alia stated that difference between taxable value shown in the balance sheet & Service tax returns is due

to exclusion of the amount of work done at DAVP rates, we were not paying service tax on the advertising agency service rendered at DAVP rates, DAVP is a Commercial concern & is not liable to service tax which was clarified by the Boards vide its letter dated 31.10.96, PRO Eastern Railways Gorakhpur vide letter dated 31.10.2012 has clarified that no service tax is to be paid on print media advertisement published at DAVP rates.

I found that party in attempt to justify short payment of service tax on services provided by them is trying to twist the meaning & misinterpret the language used in above said letters. Board's letter dated 31.10.96 (F.No. 341/43/96-TRU) is regarding clarification on scope of service tax on advertising, Courier & pager services. Para 10 of said letter read as under-

A point has been raised whether Directorate of Audio & Visual Publicity (DAVP) in the Ministry of information & Broadcasting is liable to pay service tax on services rendered by it to the different Departments of the Central Govt. in relation to Govt. Advertisement. It is clarified that DAVP not being a 'commercial concern' is not liable to pay service tax.

Clarification is in r/o services provided by DAVP not by any "Advertising Agency". Department of DAVP is not being liable to pay service tax not being a commercial concern. Party is a commercial concern & this clarification do not exempt service provided by the party even for a fraction of imagination. Actually this clarification make it clear that services provided by commercial concern are subject to service tax.

As far as PRO, Eastern Railway Gorakhpur's letter dated 31.10.12 is concerned. I found that neither he is competent authority to decide taxability of any service not he had done so. He has simply said that no service tax has been paid to any of the advertisement agency including the party.

In this regard I found that there is no exemption of service tax in r/o services provided in relation to advertisement

services at DAVP rates under Finance Act, 1994, Service Tax Rules 1994 & notification issued thereunder. Therefore party is liable to pay service tax on the advertising services rendered at DAVP rates and the same should be included to arrive at correct service tax liability.

Further party has stated that commission accrued on account of screen printing is not taxable, in this regard I found that said commission is not taxable under advertising agency service but the same is taxable under BAS.

Party has stated that in compliance with conditions laid down in notification No. 6/96 ST 31.10.96 we were properly discharging service tax liability on the commission received from the news papers published at commercial rates. I have gone through the said notification which read as under.

In exercise of the power conferred by section 85 of the Finance Act, 1996 (33 of 1996) the Central Government hereby appoints the 1st day of November 1996, as the date on which said Act shall come into force.

I found that this notification effects levy of service tax on "advertising agency service" w.e.f. 01.17.96 and has no other impact on SCN issued against the party.

Party has stated that they are discharging service tax on actual portion of commission which they retain with them from the total discount of 15% as per CBEC clarification issued vide F.No. 341/43/96-TRU dated 31.10.96. In this regard I observe that para 4 of said letter relates to valuation of taxable service of advertising agency service which is read under.

"It is further to be clarified that in relation to advertising agency, the service tax is to be computed on the gross amount charged by the advertising agency from the client for services in relation to advertisements. This would, no doubt, include the gross amount charged by the agency from the

client for making or preparing the advertisement material, irrespective of the fact that the advertising agency directly under takes the making or preparation of advertisement or gets it done through another person. However the amount paid, excluding their own commission by the advertising agency for space and time in getting the advertisement published in the print media (i.e. news papers, periodicals etc) or the electronic media (Doordarshan, Private TV channels, AIR etc.) will not be includible in the value of taxable service for the purpose of levy of service tax. The Commission received by the advertising agency would, however, be includible in the value of taxable service.

As discussed earlier party has stated that they were engaged in merely collection of material for publication without making, preparing, displaying, exhibiting or canvassing and has been observed that party is not getting any amount in r/o this activity, therefore the consideration for services provided by the party is only the commission earned from media. I observed that commission of 15% is being retained by the party & 85% of the amount collected from the advertisers is paid to the media. Above stated clarification clearly says that service tax is to be computed on "gross amount" charged by advertising agency excluding the amount paid to media. It has been further emphasized that the commission (practically it is being retained) received by the advertising agency would however be includible in the value of taxable service.

As in this case no other amount is charged, there is no question of inclusion, however gross amount of commission is liable to tax. Further this clarification is in respect of advertising agency service. However, it has already been concluded that the service provided by the party falls under the BAS and under BAS gross amount of commission earned is taxable. It is pertinent to mention that to fetch any business some expenses are to be incurred. Therefore I found

that it is illogical to claim deduction on account of expense. Further as per service tax provisions service tax is an indirect tax and to be paid on the gross amount of commission received/charged.

Party has relied on the decision of Hon'ble tribunal in the case of M/s McCann Erickson (India) Pvt. Ltd. Vs. Commissioner of Service tax. I have gone through the decision of this case. I found that this decision is not applicable in this case, as the said decision pertains to demand raised for the period 2000-2001 and that too under "advertising agency service". Therefore not relevant in respect of BAS which were made taxable later on i.e. 01.07.2003.

Party has produced copy of invoice M/s SPMLL-7170 dated 31.08.2009 raised by radio mantra. This invoice is raised to party & not against BSNL as claimed by the party. In this invoice advertising agency commission of Rs 6750/- @ 15% has been deducted under the name & style of 'agency discount credit' before charging service tax on the sale of time slot for advertisement, which is to be collected and paid by Radio Mantra. The said deduction is proper as on this amount of commission, service tax is to be paid by party not by Radio Mantra. Therefore this invoice also proves that the service tax on such commission is to be paid by the party not otherwise.

Further party vide his letter dated 18.04.2015 has submitted some copies of invoices raised by them. I found that on the invoices service tax @ 1.54% has been charged. At no point of time service tax rate was 1.54%., actually 1.94% is 15% of 10.3%, which is the applicable rate of service tax at the time of issuance of such invoices. This type of practice is normally used by the provider of such services, on which abatement of certain percentage is available. From this it is evident that party was well aware that 15% of value is taxable & intentionally has not paid due tax.

Regarding party's submission that service tax paid shown in SCN is less than actually paid. I found that the party has paid penalty and interest & same has not been considered in computing short paid service tax which is correct.

Regarding quantification of demanded service tax. I found that taxable amount has been arrived out from the figure of income from operation shown in profit and loss account @ 15%, As the figures shown in income from operation is the net amount received by the party after deducting the undue discount (against the terms and condition of accreditation policy framed by INS) it do not represent total amount of commission retained/accrued to party, Actually the correct quantification of service tax should be as under

.....

From above discussion, I came to conclusion that gross commission accrued on all 3 categories viz commission from Print/electronic media at commercial rates, commission from Print/electronic media at DAVP rates & Commission from screen printers is liable to service tax under BAS upto 30.06.2012 & under taxable service w.e.f. 01.07.2012 onwards with the accounting code 00440225 as prescribed vide circular No. 165/16 / 2012 dated 20.11.2012.

However an amount of Rs.1,02,51,252/- and Rs.20,91,205/- only has been demanded in the show cause notice & Statement of demand respectively. I am restricted to the amount demanded as I cannot go beyond the same.

Now I came to 3rd issue that whether services provided by the party are exempted after introduction of section 66D of the Finance Act, 1994 w.e.f. 01.07.2012 in this regard party has submitted that --

- 1. Got wrongly registered under Service Tax even under category Advertising Agency Service w.e.f. 01.05.2006. In fact our services are covered under the category of*

Space Selling for advertisement Service" which came into force w.e.f. 01.05.2006. (Para 2 of defense reply)

2. *With effect from 01.07.2012 sale of space for advertisement in print media continued placed out of service tax net, but the sale of time slot by a broadcasting agency or organization were brought under Service Tax net from said date as per insertion of negative list as given in Sec 66D of the Finance Act 1994. (Para 2 of defense reply).*

It has already been observed that service provided by the party do not fall under the category of sale of space or time slot for advertisement. I found that service provided by the party i.e. BAS do not fall in any of the category given in Section 66D & accordingly are not exempt from service tax even after introduction of negative list"

4.3 On Computation of Demand

From impugned order it is evident the demand has been worked out by the Commissioner on the basis of assumption that the total commission received by the appellant during entire period of dispute was on the activities shown as "Press Release & Job Work Paid" was 15% of the amount paid for such activities. In the impugned order the demand has been worked out in the table as indicated below:

Period	Amount shown as "Press Release & Job Work Paid" in the balance sheet (85%)	Actual Commission accrued, amount of Col. 2/85*15 (15%)	Rate of Service Tax Including Ed. Cess & H. Ed. Cess	Service Tax payable	Service Tax Paid	Differential Service Tax liability
<i>1</i>	<i>2</i>	<i>3</i>	<i>4</i>	<i>5</i>	<i>6</i>	<i>7</i>
2007-08	56258831	9928029	12.36%	1227104	36161	1190943
2008-09	75280893	13284863	12.36%	1642009	158849	1483160
2009-10	70516209	12444037	10.30%	1281736	46962	1234774
2010-11	88810242	15672396	10.30%	1614257	56537	1557720
2011-12	102004125	18000728	10.30%	1854075	208270	1645805
2012-13	98960961	17463699	12.36%	2158513	89082	2069431
2013-14	10426469	18400142	12.36%	2274258		2274258
2014-15	96537898	17036100	12.36%	2105662		2105662
Total		122229994		14157614	595861	13561753

Though the impugned order computes the demand as indicated in the table above we find that show cause notice and statement of demand, computes the demand in the following manner:

Period	Amount shown as "Press Release & Job Work Receipt" in the balance sheet	15% of value Received	Rate of Service Tax Including Ed. Cess & H. Ed. Cess	Service Tax payable	Service Tax Paid	Differential Service Tax liability
1	2	3	4	5	6	7
2007-08	59874357	8981154	12.36%	1110071	36161	1073910
2008-09	79006780	11851017	12.36%	1464786	158849	1305937
2009-10	73288171	10993226	10.30%	1132302	46962	1085340
2010-11	92634018	13895103	10.30%	1431196	56537	1374659
2011-12	106143712	15921557	10.30%	1639920	208270	1431650
2012-13	107753459	16163019	12.36%	1997749	89082	1908667
2013-14	111709254	16756388	12.36%	2071090		2071090
Total				10847119	595867	10251253
Statement of Demand						
2014-15	112794231	16919135	12.36%	2091205		2091205

Appellant have contended that the commission received by them is 15% is mere presumption and the figures of actual receipts and the amounts paid should determine the Commission. Taking these figures from the show cause notice and the impugned order, the surplus income and the Net Sale Margin is as indicated in the table below:

Period	Amount shown as "Press Release & Job Work Receipt" in the balance sheet	Amount shown as "Press Release & Job Work Paid" in the balance sheet	Surplus = 2-3	Net Surplus in %
1	2	3	4	5
2007-08	59874357	56258831	3615526	6.04
2008-09	79006780	75280893	3725887	4.72
2009-10	73288171	70516209	2771962	3.78
2010-11	92634018	88810242	3823776	4.13
2011-12	106143712	102004125	4139587	3.9
2012-13	107753459	99949909	7803550	7.24
2013-14	111709254	104267469	7441785	6.66
2014-15	112794231	96537898	16256333	14.41
Total	743203984	693625579	49578406	6.67

Thus the entire demand made in the show cause notice and the impugned order is based on presumed commission of 15% whereas the actual value of sales margin is available and on the basis of the said commission works out year wise as indicated in column 5 of the table above. If the commission was even to be averaged out the same would have been only 6.67% as per the figures indicated in the SCN and impugned order on the basis of Balance Sheets/ Profit and Loss Account of the appellant. From the invoices raised by the print media on the appellant and by the appellant on their clients it is evident that normally appellants were getting discount of 15% from the print media,

and they were in turn passing certain discounts to their clients while billing them. In certain cases it may be that no discount has been passed and on the basis of the those document both show cause notice and impugned order presume that commission earned by the appellant is 15 %. This fact is not established either by the figures in the balance sheet nor evidenced by the invoices of the print media on appellant and the appellant on their clients. Thus the manner in which the demand has been computed by the impugned order and the Show cause Notice/ Statement of Demand are at variance and do not inspire confidence. In fact the actual discount should have been worked out on the basis of receipts and payments which are available in the audited balance sheet.

4.4 On classification of Services:

Before we proceed further, we want examine the set of sample invoices produced by the appellant before us during the course of argument. The same were also produced before the adjudicating authority for his consideration:-

1

AMAR UJALA PUBLICATIONS LTD.
3-A, TILAK MARG, DALIBAGH, LUCKNOW, UTTAR PRADESH 226001

Bill to: ANU IMAGE AD MAKERS (P) LTD
54, HAZRATGANJ, LUCKNOW

Invoice No: D-LKN-13050258
Date: 13-05-2013
RO No: 13358
RO Date: 10-05-2013
Insert, No: 1
Booking No: D-LKN-12041572
Tone: Any Page
Premia: Any Page
Ad Type: Any Page
Pub. Name: AMAR UJALA
Key No:

Client/Ag: NER

Product: - MISCELLANEOUS

Ind: NONE

on	DOP	Advt Size (hxw)	Extra Size (hxw)	Area (In Sqcm.)	Rate (In Rs.)	Amount (In Rs.)
BAREILLY 11-05-2013		8 X 18		144	116.21	16734.24
AGRA, NAINITAL						16734.24
Amount				15.00 %		2510.13
Net Amount						14224.10

Please make payment by cheque/DD in favour of AMAR UJALA PUBLICATIONS LTD.

For: AADCA0275H for AMAR UJALA PUBLICATIONS LTD.

Authorized Signatory

Anu Image Makers Advertising Private Limited

Director

Please Tear Here

Invoice No: D-LKN-13050258 DATE 11/07/2013 AMOUNT 14224.10

Bill to: ANU IMAGE AD MAKERS (P) LTD
54, HAZRATGANJ, LUCKNOW

Client / Agency: NER (LUCKNOW).

Req./DD No: Date:

Please enclose this slip along with payment without fail.

JAGRAN PRAKASHAN LTD.

Edition- Kanpur, Moradabad, Bareilly
Regd Office : 2, SARVODAYA NAGAR, KANPUR - 208005

10758994

दैनिक जागरण
No.1
BROAD SHEET READ ONLY

विज्ञापन संख्या	प्रकाशन तिथि	आकार	दर	कुल राशि	अन्य विवरण
विज्ञापन संख्या				चौकक संख्या	चौकक तिथि
Anu Image Maker Advertising Pvt. Ltd. 54 Hazaratganj Opp. Darulshafa Lucknow U.P.				ACH/KJK1305007815	11-05-13
Client Name:- NER				Tender Notice	May-13
				अद्विष्ट क्रमांक	अद्विष्ट तिथि
				13355	10-05-13
विज्ञापन संख्या	प्रकाशन तिथि	आकार	दर	कुल राशि	अन्य विवरण
	11-05-13	8 x 18	146.96	21162.24	Display Single
				Total Amount	21162.24
				Ag. Discount 15%	3174.33
				Net Bill Amount	17987.90

नोट: 1. सभी प्रकार के भुगतान बैंक खाते में जगजन प्रकाशन लि. के नाम पर होना।
2. यदि भुगतान राशि सात दिनों के अंदर प्राप्त नहीं होती है तो 15% प्रतिवर्ष की दर से ब्याज देय होगा।

(बिना विवरण)
PAN: JCGR12345678

Anu Image Makers Advertising Private Limited

Director

Siyasat Jadid

INDIA'S LEADING URDU DAILY
(A Publication of M/s. DAILY SIYASAT JADID, Kanpur)

105/233, Chamanganj, P.O. Box No. 418, KANPUR-208 001 Ph.: 2546116 Fax: (0512) 2551450

سیاست جدید

ADVERTISEMENT BILL	
No. 2011-12/KNP-432	Date 11-05-2013

M/s. ANU IMAGE MAKERS ADVTG. CO. PVT. LTD. ...
... 54, HAZRATGANJ, ...
... LUCKNOW ...

Your Release Order/Letter No. & Date : 13357 DT. 10-05-2013
Name of the Client : NER Product :
Advertisement Rate : 23.90 Per Col. c.m. Discount : 15%

DESCRIPTION OF ADVERTISEMENT CAPTION & KEY NUMBER	DATE OF INSERTION	SPACE/SIZE	AMOUNT Rs.	P.
Tender Notice	11-05-2013	8x14=144	3441.60	
Anu Image Makers Advtg. Co. Pvt. Limited <i>(Signature)</i>		Less 15%	516.24	
TOTAL			2925.36	

Total Amount (in words) Rs. Two Thousand Nine Hundred Twenty Five Only

Enclosures : Voucher Copies

E. & O.E.



NOTE :

- All Remittance should be made by Crossed Cheques or Demand Drafts In the name of 'SIYASAT JADID'

For the **Daily Siyasat Jadid**

(Signature)
Incharge Billing

4

54, Hazratganj, (Opposite Darulshafa, Premises of Oriental Motor Car Co.) Lucknow Phone : 0522-4027741

1. If there is any objection to this bill it should be informed with in 7 days.
2. Payment should be made strictly through A/C payee Cheque/ Draft only in favour of ANU IMAGE MAKER ADVERTISING CO.PVT.LTD. Lucknow.

For Anu Image Makers Advertising Co. Pvt. Ltd.

5

पूर्वोत्तर रेलवे
विज्ञापन आदेश
अति आवश्यक

पुत्राई: ज/2/21/
प्रेषार्ता: अनुसूचित क्षेत्र विकास निगम
विषय: विज्ञापन आदेश का 16 दिनांक 12/12/13
विज्ञापन की संख्या: अनुसूचित क्षेत्र विकास निगम

इस कार्यसिद्धि के पत्र क्रमांक ज/573/0/1 भाग-2 दिनांक 29-06-2009 के अनुसार निम्नलिखित समाचार पत्रों में प्रकाशित विज्ञापन की प्रतीति, हर पत्र प्रकाशित कराने की व्यवस्था करें।

विज्ञापन का आकार 8x18 सेंटीमीटर प्रकाशन की तिथि 12/12/13 समाचार पत्र का नाम दिनांक प्रकाशित करना है, निम्नलिखित है:-

स्थान	क्र.स.	समाचार पत्र का नाम	स्थान	क्र.स.	समाचार पत्र का नाम	स्थान	क्र.स.	समाचार पत्र का नाम
बलपुर	1	विज्ञापन आदेश						
वरेली	1	अनुसूचित क्षेत्र विकास निगम						
बलपुर	1	विज्ञापन आदेश						

And Image Makers Advertising
Private Limited
Director

प्रतिनिधि - (1) विज्ञापन निगम (एनए) / पूर्वोत्तर रेलवे / बलपुर
(2) अनुसूचित क्षेत्र विकास निगम / विज्ञापन आदेश / अनुसूचित क्षेत्र विकास निगम / 16 दिनांक 12/12/13

दिनांक 8-5-2013

नोट - (1) विल प्रस्तुत करने वाले समाचार पत्रों को एक-एक विल सहा आदेश को समाचार पत्रों को जारी किया जाता है। (2) विज्ञापन प्रकाशित होने के 60 दिनों में भीतर विल प्रस्तुत करने वाले समाचार पत्रों को कोई अनुपस्थापन नहीं है।

4.5 On perusal of the above documents, it is evident that North Eastern Railway (NER) has raised an advertisement order upon the appellant specifying the category of the advertisement and newspapers in which the same was required to be published. News Paper Agencies in which the said advertisement was published have raised the bill on the appellant for publishing the said agreement by allowing discount of 15% to the appellant. On publication of the said advertisements appellant has raised the

invoices of NER for the amounts charged by the Newspaper Agencies without allowing any discount to their client on each of the invoices raised by the Newspaper Agencies on the appellant. The name of the client is indicated as NER. From the above documents it is quite evident that appellant has purchased these spaces for publication the advertisement given by NER. In these publications on a discount of 15% and have sold the same to their clients without allowing for any discount.

4.6 To the similar effect are the documents for publication of advertisement of Lucknow Development Authority, the documents in respect of this advertisement are reproduced below:-

91

कार्यालय लखनऊ विकास प्राधिकरण, लखनऊ

प्रेषक: - सहायक जन सम्पर्क अधिकारी लखनऊ विकास प्राधिकरण लखनऊ।	सेवा में, मेसर्स अनुइमेज एडवर्टाइजिंग, लखनऊ।
संख्या: 24/ज.स.का./13-14 दिनांक: 10 मई, 2013	सलंगक:

-: रिलीज आर्डर: -

विषय
हस्तान्तरण/नामांकरण किये जाने हेतु सार्वजनिक सूचना।

महोदय,

कृपया उक्त पत्र के साथ संलग्न विभाग द्वारा प्रकाशित की जाने वाली 'सार्वजनिक सूचना' 'श्वेत श्याम' का प्रारूप आपको इस आशय से प्रेषित किया जा रहा है कि उक्त विज्ञापन दिनांक 11.05.13 को 1. स्वतंत्र चेतना (डी.ए.वी.पी.दर पर) 2. इंडियन एक्सप्रेस (विशेष छूट दर पर) के प्रमुख पृष्ठ पर निर्धारित साईज 08x12 सेन्टीमीटर में प्रकाशित कराया जाय एवं प्रकाशन उपरान्त उसी दिन समाचार पत्र की तीन प्रतियां एवं डी.वी.डी. जन-सम्पर्क कार्यालय में प्रातः 10:00 बजे प्रस्तुत कर दें। दिये गये निर्देशों के विपरीत विज्ञापन प्रकाशित होने पर आपके बिल का भुगतान नहीं किया जायेगा। जिसका सम्पूर्ण उत्तरदायित्व आपका होगा।

Anu Image Makers Advertising
Private Limited

भवदीय,
5/13
(उमाशंकर सिंह)
सहायक जन-सम्पर्क अधिकारी

THE INDIAN EXPRESS LIMITED
Plot No. EL/208, T.T.C.Industrial Area, Mahape, Navi Mumbai - 400 710
Tel No.: 2767 1825 - 1828, Fax No.: 2762 5874
INVOICE

To, ANU IMAGE MAKER ADVERTISING PVT LTD 54,HAZRATGANJ,LUCKNOW LUCKNOW-226001 LUCKNOW - 226001 Accredited Agency Advertiser : Lucknow Development Authority K O No. / Date : 13364/ 10-05-13 Order No. / Date :		While Making Payment Please Quote		
		Agency Code	Invoice No.	Date
		40010220	1001508539	11-05-13
		Type :	STANDARD	
		AD Type:	TENDER - NOTICE	
		Position:	ANY PAGE	
		Package:	SOLO	
		Scheme:		
Advertiser		Lucknow Development Authority	Format Proposal	
K O No. / Date		13364/ 10-05-13		
Order No. / Date		Insertion No.	1	

Width	Height	Volume	BU for Extra Size	Colour	Package Rate	Extra Charges %	Discount (%)	Amount (Rs.)
12	8	96		B/W	117.00			11232.00
PAN No. AACCT1148F Product Key: Rupees in words: Nine Thousand Five Hundred Forty Seven IEDL-MN Publication Edition IE Lucknow							Amount	11232.00
							Trade Discount 15 %	1684.80
							Total	9547.20
							Box Charges	
							Net Amount	9547.20
							Net Payable	9547.00

Anu Image Makers Advertising
Private Limited

Director

Regd Office : Express Towers, Nariman Point,
Mumbai - 400021
Tel. No. 022 - 2202 2627
Fax No. 022 - 2202 2139

For The Indian Express Limited

Jayaprakash

Authorised Signatory 24.08.2009 LUCKNOW

TERMS & CONDITIONS:	
1. Payment shall be by Account payee Cheque / DD / Pay Order only. To be remitted to The Indian Express Ltd, 2nd Flr., Express Towers, Mumbai 400021 ("the company").	
2. Only official receipts issued by the Company are binding.	
3. The invoice is payable with credit period agreed if any. If no period is agreed, then it shall be payable forthwith. Interest will be chargeable @ 24% pa from due date till actual payment or realization.	
4. All complaints/disputes/request for make good etc must reach the Company within 15 days of the receipt of the invoice, failing which the entire invoice amount shall be due and payable.	
5. The advertiser &/or the advertising agency shall be solely responsible for advertisement content; and shall indemnify the Company from all 3rd party claims.	
6. Printed or other conditions on release order are not binding on the company if contrary to the Company's rules and regulations.	
7. In the event of any disputes/differences relating to or arising from publication, non publication and/or this invoice, between the parties hereto and/or the advertiser/advertising agency, it shall be referred to the sole arbitrator to be appointed by the CMD of The Indian Express Limited. Such arbitrator may be an employee of the Company. The venue for arbitration shall be Mumbai, India. The Arbitration proceeding shall be governed by the Arbitration and Conciliation Act, 1996. The proceedings of arbitration shall be in English language. The Arbitrator's award shall be substantiated in writing. The parties hereto shall submit to the Arbitrator's award and the award shall be enforceable in any competent court of law.	
8. This invoice shall be governed by and construed in accordance with the laws of Mumbai, India. Subject to the above arbitration clause, the courts of Mumbai, shall have exclusive jurisdiction.	
E.& O.E. Encl : VOUCHER TEAR SHEETS / RELEASE ORDER COPY	

स्वतंत्र चेतना

SWATANTRA CHETNA

THE MEMBER

D.A.CHETNA PRAKASHAN PVT.LTD.**CHETNA BHAWAN, SHAH MAROOF, GORAKHPUR, U.P.****FAX NO : 0551-2341810****email id: anandchetnanews@gmail.com**

Invoice No Ad0289/13 Edition Lucknow Date 11-05-2013

M/S ANU IMAGE MAKER'S

LUCKNOW

MONTH PUBLICATION

May 2013

Client- Lucknow Development Authority

R.O. No. 13365

DESCRIPTION	SIZE	RATE	AMOUNT	REM.
11-05-2013	12 x 8= 96	23.90	2294.40	

Trade Discount 15% - 344.16

1950.24

Private Limited

One Thousand Nine Hundred Fifty Only

Director

FOR SWATANTRA CHETNA

- NOTE: 1. Payment should be made through crossed cheque/draft in favour of D.A.Chetna Prakashan Pvt. Limited, Gorakhpur
2. Cash Payment will be accepted in office only.
3. Without office receipt organization will not be responsible for any payment.

Phone : 0522-4027741

ANU IMAGE MAKERS ADVERTISING PVT. LTD.54-HAZRATGANJ (OPP. DARULSAFA, PREMISES OF ORIENTAL MOTOR CAR CO.)
LUCKNOW

BILL No. : 31/2012-13		BILL TO : The Secretary Lucknow Development Authority Lucknow.		
Dated : 23.05.2013				
Name of Publication & Place of Origin	Date of Insertion	Size (Sq.C.M.) Area	Rate Per (Sq.C.M.) Rs. P.	A M O U N T Rs. P.
1-Indian Express, Lucknow	11.05.13	12x8=96	117.00	11232.00
1-Swatantra Chetna, Lucknow	11.05.13	12x8=96	23.90	2294.40
				13526.40
			TOTAL	13526.40
Total Amount (In Words) : Thirteen Thousand Five Hundred Twenty Six Only				13526.00

Anu Image Makers Advertising
Private Limited

1. If there is any objection to this bill it should be informed within 7 days.
2. Payment should be made strictly through A/C Payee Cheque/Draft only in favour of **ANU IMAGE MAKERS ADVERTISING PVT. LTD.** Lucknow
PAN no "AACCA 0278K" and S.Tax registration no. is 60/ADV-14/LKO/99.

For ANU IMAGE MAKERS ADVERTISING PVT. LTD.

Bill Jan 2010 343

4.7 We would not like to multiply by including all the sample invoices produced before us but suffice to say that all transactions have followed the same pattern.

4.8 On the listed by the Commissioner at S. No 1 in an identical case of M/s Varadhi Advertisers Pvt. Ltd. referred to by the appellant, Hyderabad Bench has held as follows:-

6. From the documentary evidence placed before us, it is seen that for getting the advertisement published, the Appellant gets an invoice from the print media wherein they are giving discount of 10%-15%. After the advertisement is published, the Appellant is raising the invoice on Government of Andhra Pradesh and other clients wherein he is charging the full amount. The difference between the invoice raised by the Appellant on their clients and invoice raised on the Appellant by the print media is the margin which is available to the Appellant. The Revenue claims that this margin is the commission earned by the Appellant for the services provided to the print media. From the records, no evidence has been brought in by the Department to the effect that the Appellant has been appointed as an agent by the print media. Any person can be said to be acting as an agent only when there is specific Agreement between the person engaging the agent clearly specifying the terms of activities to be undertaken by them for the principal and the consideration to be given for such activities. Only then it can be concluded that the person is acting as an agent for the principal. In this case, just because the Appellant happens to be a member of the Indian Newspaper Society and gets concessional rate for getting the advertisements published in the print media, it cannot be concluded that this discount being given is on account of any commission paid by the print media. In this case, it is seen that it is a kind of trading activity in services. The Appellant first books the space by getting certain discount and sells the

same at a higher rate to their clients. Therefore, the discount being received by him from the print media is nothing but a profit margin and not any commission received from the print media.

7. Coming to the case law cited by the Appellant in EURO RSCG Advertising Ltd (cited supra), the Tribunal has held as under:

"2. The appellants provide advertising services to their various clients. In order to provide the above services, they in turn, get in touch with media for booking of time slot on various satellite channels to their clients. As per industry practice, the Broadcasting agency provides 15% discount from their Tariff rate to the appellants.....

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In the present case, a person or an organization who wants to advertise their product approaches an advertising agency. Therefore such a person/organization who wants to avail the services of advertising agency becomes the client of the advertising agency. The advertisement can be done in various ways either through Print Media or through Radio or Television, etc. in order to fulfill the requirements of his client the advertising agency which is the service provider gets in touch with the appropriate media. In other words as far as the advertising agency is concerned, its client is not the media. In order to provide advertising services the advertising agency charges certain amounts from the clients. Such amounts are liable to service tax. With regard to the relationship between the advertising agency and the media, the advertising agency has to pay amount to

the media and not the other way. To put it differently, the media such as broadcasting agency charges the advertising agency for insertion of the advertisement either in Print Media or in Television. In the present case, the media gives a discount of 15% to the advertising agency. If the Tariff rate is Rs. 100/-, it is sufficient the advertising agency pay the media Rs. 85/- along with service tax. The service tax component received from the advertising agency in turn is remitted to the exchequer by the media agency. The appellants have demonstrated that they have not received any amount from the media. They got only a discount from them. Perhaps the word "commission" is misleading. There is actually no evidence that the said amount has been received by the appellant from the media. In any case, any amount received by the service provider from his client only is liable to service tax and not amounts received from others. The adjudicating authority has neither considered the factual position nor the legality of the entire issue. The impugned order 12/2005 dated 27-4-2005 has no merits. Since there is no service tax liability, there is no question of imposing penalty and demanding interest. Hence we set aside the same and allow the appeal with consequential relief." [Emphasis Supplied]

6. In the case of Kerala Publicity Bureau (cited supra) it is held as under:

"3. The brief facts of the case are that the appellants were covered under the category of advertising agencies. The Audit found that they had collected incentives from M/s. Malayala Manorama. The Revenue has considered these receipts as extra commission and had proceeded to recover Service Tax on these amounts by invoking larger period....

4. The learned Chartered Accountant submits that the above cited case along with the case of *M/s. Euro RSCG Advertising Ltd. v. The Commissioner of Service Tax*, on this very issue, was decided by this bench in assessee's favour. He produced a copy of the Final Order Nos. 60 & 61/2007 dated 27-12-2006 [2007 (7) S.T.R. 277 (Tribunal)] and prays for following the ratio by allowing the appeal. He points out that the Tribunal has clearly held that what was received was not taxable service and it was not a commission. The same facts are seen in the present case and prays for allowing the appeal.

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6. On a careful consideration, I notice that the facts in the present case are identical to the one decided by the Division Bench in the case of *M/s. Euro RSCG Advertising Ltd. and M/s. Marketing Consultants & Agencies Ltd. v. CST* by Final Order Nos. 60 & 61/2007 [2007 (7) S.T.R. 277 (Tribunal)]...

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Respectfully following the ratio of the above noted judgment, the impugned order is set aside and appeal allowed with consequential relief, if any.”
[Emphasis Supplied]

7. In the case of *McCann Erickson (India) Pvt Ltd* (cited *supra*), it is held as under:

"2. The appellants render taxable service under the category of "advertising agency service". They entered into contract with their clients for providing advertisement agency service. The appellants render advertising services to various clients in the form of creative agency wherein they create advertisement

by themselves or their third party media agency wherein they do media printing and/or buying for advertisement to be published in print/electronic media. They were (8) ST/757/2009, ST/1544/2010, ST/27783/2013 ST/30547/2016 & ST/30612 & 30622/2017 receiving 15% agency commission from authorized broadcasting and print media during the period April 2000 to March 2001.....

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4. We heard both sides. The basic point which should be borne in mind is that service tax is levied on the gross amount received by the service provider from the recipient of the service for the services rendered. In this case, the appellant is the service provider. The appellant being an advertisement agency rendered advertising service by engaging print, electronic media etc. The tax authorities should see whether the appellants had discharged duty liability on the gross amount received from their clients. In this case, the various media are not clients of the appellant namely, the advertising agency. If the media gives discount of 15% to the appellant, that amount has nothing to do with the gross amount received by the appellant from their clients to whom they rendered advertisement services. Therefore, there is no logic in demanding service tax on the discount of 15% received by the appellant from print media. Identical issue was the subject matter of the Tribunal in the case of Euro RSCG Advertising Ltd. v. CCST, Bangalore reported in 2007 (7) S.T.R. 277 (Tribunal) = (2007) 9 STJ 56 (CESTAT Bangalore) wherein the issue was decided in favour of the appellants..." [Emphasis Supplied]

8. In the case of Poornima Advertising & Promotion Pvt Ltd (cited supra), it is held as under:

"2. Heard both the sides. We find that the conclusion of the Commissioner (Appeals) that appellant is eligible for refund on merits is correct. The master circular issued by the board has clarified that merely canvassing advertisement for public on commission basis is not classifiable under the taxable service as advertising agency service. Such services are liable to Service tax under business auxiliary service. Poornima is engaged only booking of space or time. Whenever a request is received, Poornima simply books the space in the newspaper or books the time in the media and thereafter collects the amount paid to the media or newspaper. For this service provided to the client, service charge is collected by them. In fact Poornima gets a discount from the media/newspaper and they pass on a portion of the discount to the clients and retain balance which is their remuneration for the service provided by them. The revenue is in appeal against the decision of the Commissioner that the service provided by the appellant is not an advertising agency service. According to the Revenue, the scope of the service extends not only to any service connected with advertisement but also any service connected with display or exhibition of advertisement. However, we find that the master circular issued by the Board itself is against the Revenue and the service provided by the appellants is admittedly only in respect of booking the space or time. We agree with the learned Commissioner (Appeals) that the master circular covers the case of the appellants and therefore the Revenue's appeal about classification cannot be accepted.

5. Another point which Commissioner (Appeals) has decided in favour of the appellants is that the Service tax liability arises only on the actual amount

collected by the appellants and not on the full discount received by them from advertising agency, from the newspaper or the media. The very same issue had come up before the Tribunal in the case of Mccann Erickson India Pvt. Ltd. reported in 2008 (10) S.T.R. 365 (Tri.-Bang.) and also Euro RSCH Advertising Ltd. v. C.C.S.T., Bangalore reported in 2007 (7) S.T.R. 277 (Tri. -Bang.). In both the cases it was held that Service tax is payable only on the actual amount received by the service provider.”
[Emphasis Supplied]

9. In the case of P. Gautam & Co (cited supra), it is held as under:

8. It can be seen from the above reproduced findings that the issue regarding whether discounts/incentives given to the appellant as an advertising agency would be liable for the service tax under the business auxiliary services. It is seen and as correctly pointed out by the learned counsel that the Coordinate Bench of the Tribunal in the three cases as cited herein above, have held that the discounts/incentives received by the assessee from the print media will not be liable for service tax under the category of advertising agency services. If that be so, the said discounts/incentives itself cannot be considered for the purpose of taxability under the head business auxiliary services as the amounts which are received are in respect of the services provided under the category of advertising agency services and the amount are discounts and incentives and not as charges for services.”
[Emphasis Supplied]

9. In the case of Reliant Advertising (cited supra), it is held as under:

"13. In Euro RSCG Advertising Ltd., Id. Division Bench of this Tribunal has recorded that the

appellants (therein) provided advertising services to their various clients and in order to do so, got in touch with media for booking of time slots on various satellite channels for their clients and as per industry practice the broadcasting agency provides 15% discount from their Tariff rate to the appellant. It is this discount on the tariff rate provided by the broadcasting agency that the appellant passes on to its clients and that 15% was brought to tax as income on which Service Tax is exigible. This Tribunal held that there was no evidence on record to the effect that any amount was received by the appellants from the media and ruled that amounts received by the service provider is alone liable to service tax and not amounts received from others. This Tribunal (in Euro RSCG Advertising Ltd.) held that the adjudicating authority failed consider the relevant facts or the legality of the entire issue insofar as issue of cash discount and concluded that cash discount is an income from payment of bills in advance and not from the services rendered to clients, therefore the same does not attract Service Tax as advertising agency service. [Emphasis Supplied]

10. In the case of Grey Worldwide (I) Pvt Ltd (cited *supra*), it is held as under:

"4.1 From the nature of the transactions undertaken in the present case, it is seen that the appellant is rendering advertising agency services to various clients who are the advertisers. On behalf of these advertisers, the appellant has placed advertisements in the print/electronic media. The choice of the print/electronic media is with the advertiser and not with the advertising agency, who merely co-ordinates between the media and the advertiser. On the agency commission received, they have

discharged Service Tax liability. Similarly, the electronic media also discharges Service Tax liability on the consideration received for broadcasting which includes incentives, if any, to be paid. Thereafter, at the end of the year, depending upon the volume of business given by the advertising agency, the media gives certain incentives by way of volume discounts/rate difference. There is no agreement or understanding or any contract between the advertising agency and the media for promotion of the media's business activities. There is also no obligation on the part of the media to give these incentives. These payments are made only as a gratuitous payments for the advertisements placed on the media. There is no contractual obligation between the advertising agency and the media for provision of any services. In the absence of such a contractual obligation, it is difficult to accept the Revenue's contention that on the incentives received, the appellant is liable to Service Tax under BAS. This was the view taken by this Tribunal consistently in a series of decisions starting from Euro RSCG Advertising Ltd. (cited supra).

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..... Therefore, it can be seen that the Tribunal has been consistently taking the stand that incentives received by an advertising agency from the media without any contractual obligation to render any service cannot be levied to Service Tax under the category of BAS. Following the ratio laid down in these decisions, in the present case also, we hold that the demands on the amounts received from the media cannot be levied to Service Tax under BAS."
[Emphasis Supplied]

11. From these case laws, it gets clarified that the issue is no more res integra. The amount of incentive received by the Advertising Agency from the print media has been under litigation and the Tribunals have been consistently holding that such incentives or discounts cannot be termed as Business Auxiliary Service.

12. On going through the case law relied upon by the Revenue, Malar Publications Ltd (cited supra), it is seen that the facts are different. There the Appellants were canvassing advertisements for the publications like Daily Thanthi, Rani Weekly etc., and were getting fixed retainership fee for their work. Therefore, the decision arrived at by the Tribunal in the case of Malar Publications Ltd is distinguishable and cannot be applied to the facts of the present case.

13. Accordingly, we hold that the confirmed demand on the ground that the Appellant was providing Business Auxiliary Services to the print media cannot legally sustain. Therefore, we allow these Appeals filed by the Appellant with consequential relief, if any, as per law."

4.9 We find that issue involved in the matter is squarely covered by the afore-stated decision of the tribunal. In view of the above decision we do not find any merits in the impugned order demanding service tax on the services provided by the appellant by classifying their services under the category of Business Auxiliary Services. The services provided by the appellant would have merited classification under the category of advertising agency services and the appellants were required to pay service tax under this category on the income received under this category. We refer to Clause 65 (105) (zzzm), of Finance Act, 1994 as inserted with effect from 01.05.2006 read as follows:

"(zzzm) to any person, by any other person, in relation to sale of space or time for advertisement, in any manner; but does not include sale of space for advertisement in

print media and sale of time slots by a broadcasting agency or organisation.

Explanation 1.—For the purposes of this sub-clause, "sale of space or time for advertisement" includes,—

Explanation 2.—For the purposes of this sub-clause, "print media" means "book" and "newspaper" as defined in sub-section (1) of section 1 of the Press and Registration of Books Act, 1867;"

By following clarification was issued:

3.9 SALE OF ADVERTISING SPACE OR TIME: *Sale of media in television and radio by a broadcasting agency or organization is taxable under Section 65(105)(zk). **Services provided by advertising agencies are taxable under Section 65(105)(e).***

This entry proposes to levy service tax on sale of time or space for advertisement, excluding sale of space for advertisement in print media. It may be noted that advertisement in print media is excluded.

In case of Reliant Advertising [2013 (31) S.T.R. 166 (Tri. – Del)] Delhi bench held as follows:

"6. *Section 65(2) of the Finance Act, 1994 (hereinafter the Act) defines "advertisement" as including "any notice, circular, label, wrapper, document, hoarding or any other audio or visual representation made by means of light, sound, smoke or gas." Sub-Section (3) of Section 65 defines "advertising agency" as meaning any person engaged in providing any service connected with the making, preparation, display or exhibition of advertisement and includes an advertising consultant". Sub-section (105) of Section 65 read with clause (e) thereof defines a taxable service (in the context) as a service provided to any client, by an advertising agency in relation to advertisement, in any manner and clause (zzzm) of Section 65(105) defines the relevant taxable service as service provided to any*

person, by any other person, in relation to sale of space or time for advertisement, in any manner; but excluding sale of space for advertisement print media and sale of time slots by a broadcasting agency or organisation. Explanation (1) to Section 65(105)(zzzm) defines the expression "sale of space or time for advertisement" to include providing space or time, as the case may be, for display, advertising, showcasing of any product or service in video programmes, television programmes or motion pictures or music album, or on billboards, public places, buildings, conveyances, cell phones, automated teller machines, internet; etc.

7. *It is the admitted case that the assessee was not assessed to tax by the adjudication order in respect of any transaction involving sale of space for advertisement in the print media.*

8. *The assessee is admittedly a commercial concern engaged in providing advertisement services to a client, in relation to advertisement i.e. in relation to sale of space or time and was not charged for sale of space for advertisement in the print media. He receives requisitions for arranging advertisements either directly by an advertiser or from another advertising agency and is also engaged on occasions in passing on material received from an advertiser directly without any value addition, to the advertising medium or in some instances by making value additions by way of advertising inputs; and in case of transactions involving another advertising agency based on the advertising material so received from the principal agency to the advertising media.*

9. *On an interactive analysis of the provisions of Section 65(2); 65(3); 65(105)(e) and 65(105)(zzzm) read with the explanation (1) thereunder, the conclusion is irresistible that the activity of the petitioner falls within the taxable*

service of "advertising agency", defined in Section 65(105)(zzzm)."

Affirming this decision Hon'ble Punjab and Haryana High Court as reported at [2016 (41) S.T.R. 165 (P & H)] held as follows:

"4. The adjudicating authority vide order dated 2-7-2007, Annexure A.5 confirmed the demand of service tax amounting to Rs.7,11,804.78 and Education Cess of Rs. 3692.90 for the period from 1-4-2001 to 31-12-2005 under Section 73(2) of the 1994 Act by invoking extended period of limitation. Recovery of interest on the confirmed demand under Section 75 of Chapter V of the 1994 Act was also ordered. The Commissioner (Appeals) on appeal by the assessee vide order dated 14-11-2007, Annexure A.7 held that where merely canvassing was involved to contact potential advertiser and the services like estimating the space that advertisements would occupy, negotiating the price, informing the general lay out of the advertisement were not involved, then service tax was not liable on such canvassing. Relying on the judgment of the Tribunal at Bangalore in Euro RSCG Advertising Limited v. Commissioner of CST, Bangalore - 2007 (7) S.T.R. 277 (Tri.-Bangalore) wherein it was held that the amounts received as cash discount and incentives were not liable to service tax since no service was provided by the advertising agency to the media, the Commissioner (Appeals) recorded that the incentives or cash discounts shown as commission in the balance sheet of the appellant were not liable to service tax. Aggrieved by the order, the Revenue went in appeal before the Tribunal. The Tribunal while reversing the order passed by the Commissioner (Appeals), vide order dated 9-4-2013, Annexure A.9 recorded that the assessee was not assessed to service tax on any transaction involving sale of space for advertisement in print media. It was concluded that the activity of the appellant-assessee fell within the taxable

service of "advertising agency". The relevant findings read as under :-

"6. Section 65(2) of the Finance Act, 1994 (hereinafter the Act) defines "advertisement" as including "any notice, circular, label, wrapper, document, hoarding or any other audio or visual representation made by means of light, sound, smoke or gas". Sub-section (3) of Section 65 defines "advertising agency" as meaning any person engaged in providing any service connected with the making, preparation, display or exhibition of advertisement and includes an advertising consultant". Sub-section (105) of Section 65 read with clause (e) thereof defines a taxable service (in the context) as a service provided to any client, by an advertising agency in relation to advertisement, in any manner and clause (zzzm) of Section 65(105) defines the relevant taxable service as service provided to any person, by any other person, in relation to sale of space or time for advertisement, in any manner; but excluding sale of space for advertisement print media and sale of time slots by a broadcasting agency or organisation. Explanation (1) to Section 65(105)(zzzm) defines the expression "sale of space or time for advertisement" to include providing space or time, as the case may be, for display, advertising, showcasing of any product or service in video programmes, television programmes or motion pictures or music album, or on billboards, public places, buildings, conveyances, cell phones, automated teller machines, internet, etc.

7. It is the admitted case that the assessee was not assessed to tax by the adjudication order in respect of any transaction involving sale of space for advertisement in the print media.

8. The assessee is admittedly a commercial concern engaged in providing advertisement services to a client, in relation to advertisement i.e. in relation to sale of space or time and was not charged for sale of space for advertisement in the print media. He receives requisitions

for arranging advertisements either directly by an advertiser or from another advertising agency and is also engaged on occasions in passing on material received from an advertiser directly without any value addition, to the advertising medium or in some instances by making value additions by way of advertising inputs; and in case of transactions involving another advertising agency based on the advertising material so received from the principal agency to the advertising media."

5. Further, as pointed out by the learned counsel for the respondents, in the adjudication order dated 2-7-2007, Annexure A.5, in answer to the question whether the appellant collected service tax from its clients on all the bills raised by it, Mrs. Shaifali Singh, partner of the assessee made statement on 23-8-2006 wherein it was stated that it received 15% commission from the newspapers on gross business with them and collected service tax on that commission from its clients on the bills raised by it. The relevant portion read thus :-

"Q.5 : How do you raise bills to your clients and collect Advertising charges and whether it includes service tax? How do you arrive at the taxable value for payment of service tax? Have you collected service tax from your clients on all the bills raised by you?

A : We received 15% commission from the newspapers on gross business with them and we collect service tax on this commission from our clients on the bills raised by us."

Still further, in answer to Question No. 6 also, the correctness of the figures of turnover from advertising business was admitted. The relevant portion thereof is as under :-

"Q.6 : In your balance sheets the figures of turnover by press advertisement receipt have been shown as :

Year	Turnover (Rs.)
2001-02	1,53,71,255.12
2002-03	1,77,07,149.35
2003-04	2,71,55,528.86
2004-05	93,18,097.73

Are these the correct figures as per your balance sheets?

Answer : Yes, these are the figures of turnover of our advertising business as shown in balance sheets of our firm."

Thus, service tax amounting to Rs. 7,11,804.78 and Education Cess of Rs. 3692.90 for the period 1-4-2001 to 31-12-2005 had been rightly imposed on the assessee-appellant besides recovery of interest on the confirmed demand."

It is noted in the show cause notice and the impugned order that appellant were paying service tax on the income earned that is net surplus i.e. difference of payment received and the payment made. The demand made by classifying the services provided under the category of Business Auxiliary Services on a notional value of the commission received cannot be sustained.

4.10 On the issue mentioned at Sl. No. 3,-

Whether the Services provided by the Appellant would merit classification as "Space Selling for Advertisement", to be put under negative list with effect from 01.07.2012: Section 66D (g) of the Finance Act, 1994, w.e.f 01.07.2012 reads as follows:

SECTION 66D. Negative list of services.—

The negative list shall comprise of the following services, namely :-

(g) selling of space for advertisements in print media;

4.11 Clarifying the position with effect from 01.07.2012, Education Guide issued by the Board at 4.7.1 clarified as follows:

"4.7.1 Sale of space of time for advertisements not including sale of space for advertisement in print media and sale of time by a broadcasting agency or organization is currently taxed under clause (zzzm) of sub-section (105) of the Finance Act,1944. So what kind of sale of space or time would become taxable and what would be not taxable?"

<i>Taxable</i>	<i>Non-taxable</i>
<i>Sale of space or time for advertisement to be broadcast on radio or television</i>	<i>Sale of space for advertisement in print media</i>
<i>Sale of time slot by a broadcasting organization.</i>	<i>Sale of space for advertisement in bill boards, public places (including stadia), buildings, conveyances, cell phones, automated teller machines, internet</i>
	<i>Aerial advertising"</i>

In view of the decisions as above we are clear that the services provided by the Appellant would be the service of sale of space for advertisement in print media and would be covered under Negative List specified by Section 66D of the Finance Act, 1994 with effect from 01.07.2012. Accordingly we do not find any merits in the impugned order demanding the service tax on these services provided by the appellant, by way of sale space for advertisement in print media with effect from 01.07.20012.

4.12 As we find that the case cannot be upheld on the merits itself we are not considering the issue of limitation. As the demand of tax is set aside the penalties imposed too are set aside.

4.13 Thus we do not find any merits in the impugned order.

5.1 Appeal is allowed.

(Pronounced in open court on-12 March, 2024)

Sd/-
(P.K. CHOUDHARY)
MEMBER (JUDICIAL)

Sd/-
(SANJIV SRIVASTAVA)
MEMBER (TECHNICAL)

akp