CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
ALLAHABAD

REGIONAL BENCH - COURT No. I

Service Tax Appeal No.70200 of 2020 With
Service Tax Cross Application No.70040 of 2021

(Arising out of Order-in-Appeal No.573-ST/APPL/LKO/2019 dated 30/11/2019 passed by Commissioner (Appeals) Customs, Central Excise & GST, Lucknow)

Commissioner of Central Excise &

CGST, Agra .....**Appellant**

(113/4, Sanjay Place, Agra-282002)

VERSUS

M/s Elex Advertisers, ...**Respondent**

(G-9 & 10, Block C-21,
Opposite Nuova Hotel, Sanjay Place, Agra)

APPEARANCE:

Shri A.K. Choudhary, Authorised Representative for the Appellant
Shri Shambhu Chopra, Senior Advocate &
Ms Mahima Jaiswal, Advocate for the Respondent

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

FINAL ORDER NO.70590/2024

DATE OF HEARING : 28 August, 2024
DATE OF DECISION : 28 August, 2024

SANJIV SRIVASTAVA:

This appeal filed by the revenue is directed against Order-in-Appeal No.573-ST/APPL/LKO/2019 dated 30/11/2019 passed by Commissioner (Appeals) Customs, Central Excise & GST, Lucknow. By the impugned order following has been held:-

"I have gone through the case record. The appellant argue that they have paid the service tax on all the services except "Sale of space for Advertisement" which is exempt under Section 66D (g) of the said Act. As mentioned in para 17 of the impugned order, the appellant claimed before the

adjudicating authority that they were engaged in the following three types of activities:

(i) Only printing and designing of flex--- Service tax already paid.
(ii) Only sale of space for advertising--- exempt from service tax
(iii) Composite service of flex printing and sale of space-Service tax already paid on flex printing component.

6. From the above, it is apparent that the appellant had legal clarity that only flex designing/ printing is liable to service tax and sale of space for advertising was exempt under section 66D (g) of the said Act. As per Table 7 of the impugned order, the appellant has already paid service tax amounting to Rs 4481234/. The impugned gross values have been taken from Balance sheets. There is no evidence that the impugned receipt was actually received in lieu of providing taxable service. In para 10 of the SCN it was alleged that the appellant provided Advertising Agency service in the garb of Sale of space for Advertisement, and wrongly availed the exemption. However, this charge has not been substantiated. The appellant has submitted copies of their agreement with various local bodies assigning space to them for advertisement purpose. The appellant contends that the said space was sold for advertising, mounting of hoarding/ banner etc. The said activity is clearly covered under section 66D (g) of the said Act. Hence, there is no ground to demand service tax on the same. The impugned order is, therefore, not sustainable and the same is set aside. The appeal is allowed."

2.1 Show cause notice was issued to the respondent on the basis of the differences noted in third party information i.e. form 26AS received from Income Tax Department and ST-3 returns filed by the appellant. It was alleged that appellant has suppressed the value of taxable services provided by them to the extent of difference and service tax was demanded. Respondent was called upon to show cause as to why-

"(i) The not paid/short-paid Service Tax (including Edu. Cess & S.&H. Edu. Cess) amounting to Rs. 65,02,655.00 (Rupees Sixty Five Lakh Two Thousand Six Hundred Fifty Five only), in lieu of providing the taxable services relating to Advertisement, during the financial years 2012-13, 2013-14 & 2014-15, should not be demanded and recovered from them under proviso to Section 73(1) of the Finance Act, 1994 read with Section 174 of CGST Act, 2017;

(ii) Interest at the appropriate rate for the relevant period till the payment of above mentioned short paid/ not paid Service Tax should not be demanded and recovered from them under the provisions of Section 75 of the Finance Act, 1994 read with Section 174 of CGST Act, 2017;

(iii) Penalty should not be imposed upon them under Section 78 of the Finance Act, 1994 read with Section 174 of CGST Act, 2017 for their failure to pay Service Tax by reason of willful suppression of facts with intent to evade payment of Service Tax;

(iv) Penalty should not be imposed upon them under Section 77(1)(b) & 77(2) of the Finance Act, 1994 read with Section 474 of the CGST, 2017, contravention of Section 67, 68 & 70 of the Finance Act, 1994 read with Rule 5, 6 & 7 of the Service Tax Rules, 1994;

(v) Late Fee amounting to Rs.1,84,100.00 (Rupees One Lakh Eighty Four Thousand One Hundred only) as per Table-10, should not be imposed upon them under Section 70 of the Finance Act, 1994 read with

Rule 7C of the Service Tax Rules, 1994 and Section 174 of the CGST Act, 2017."

2.2 This show cause notice was adjudicated by the Original Authority vide order dated 29.01.2019 by holding as follows:-

"ORDER

(i) I confirm the demand of Service Tax amounting to Rs. 65,02,655.00 (Rupees Sixty Five Lakh Two Thousand Six Hundred Fifty Five only) as detailed in Table-8/9 of the show cause notice, under proviso to Section 73(1) of the Finance Act, 1994 read with Section 174 of CGST Act, 2017, against M/s. Elex Advertisers, G-9 & 10, Block C-21, Opposite Nuova Hotel, Sanjay Place, Agra;

(ii) I confirm the demand of interest at the appropriate rate for the relevant period till the payment of Service Tax as confirmed at Sr.No.(1) above, against M/s. Elex Advertisers, G-9 & 10, Block C-21, Opposite Nuova Hotel, Sanjay Place, Agra, under Section 75 of the Finance Act, 1994 read with Section 174 of CGST Act, 2017;

(iii) I impose a penalty of Rs. 65,02,655.00 (Rupees Sixty Five Lakh Two Thousand Six Hundred Fifty Five only) upon M/s. Elex Advertisers, G-9 & 10, Block C-21, Opposite Nuova Hotel, Sanjay Place, Agra, under Section 78 of the Finance Act, 1994 read with Section 174 of CGST Act, 2017;

(iv) I impose a penalty of Rs. 10,000.00 (Rupees Ten Thousand only) upon M/s. Elex Advertisers, G-9 & 10, Block C-21, Opposite Nuova Hotel, Sanjay Place, Agra, under Section 77(1)(b) of the Finance Act, 1994 read with Section 174 of CGST Act, 2017;

(v) I impose a penalty of Rs. 10,000.00 (Rupees Ten Thousand only) upon M/s. Elex Advertisers, G-9 & 10, Block C-21, Opposite Nuova Hotel, Sanjay Place,

Agra, under Section 77(2) of the Finance Act, 1994 read with Section 174 of CGST Act, 2017;

(vi) I impose a late fee of Rs.1,84,100.00 (Rupees One Lakh Eighty Four Thousand One Hundred only) as per Table-10 of the show cause notice upon M/s. Elex Advertisers, G-9 & 10, Block C-21, Opposite Nuova Hotel, Sanjay Place, Agra, under Section 70 of the Finance Act, 1994 read with Rule 7C of the Service Tax Rules, 1994 and Section 174 of the CGST Act, 2017."

2.3 Aggrieved respondent filed appeal before the Commissioner (Appeals) which has been allowed taking note of the facts that appellant have paid service tax amounting to Rs.44,81,234/- on the charges received which is liable to service tax in the post negative list.

2.4 Aggrieved by the said order, revenue has filed this appeal on the following grounds:-

"3.6 In Order-in-Original the Adjudication authority has confirmed the demand of Service tax on the basis of invoices/ bills submitted by the party. As per the bills /invoices issued by the party during the period in disputes which are relied upon documents in the impugned show cause notice, during adjudication it was found that the description of activity undertaken by the party were recorded in the said bills/ invoices either Outdoor Display Media rent' or as 'Flex printing with Installation or as Outdoor Display Media Rent & Flex Printing charges'.

3.7 From the said activity as mentioned in the bills of the party it is clearly evident that they have charged the costs of flex, cost of printing on such flex and mounting charges of such hoardings prepared by them. The party have thus not only collected the rent of the hoardings, they have also collected all the costs incurred while preparing these hoarding and putting them for display at the specified *place for the specified time period. This means that the bills raised by them include the costs of the advertising materials consumed into making of the said hoardings.*

3.8 Apart from above they have also collected the charges involved on the maintenance of such hoardings over the period of time. Therefore this is quite obvious that the party has provided taxable service to their clients.

3.9. This means that the bills raised by them include the costs of the advertising materials consumed into making of the said hoardings. And not only this, they have also collected the charges involved on the maintenance of such hoardings over the period of time. Therefore this is quite obvious that the party has provided taxable service to their clients. And the same is not covered under Section 66D (g) of the Finance Act, 1994.

3.10 Thus both the findings of the Commissioner (Appeals) Lucknow (i) that the gross values of taxable service was taken from the Balance sheet for demanding service tax as well as (ii) the activity of the party are covered under Section 66D (g) of the finance Act, 1944; are not just and proper, as the demand of service tax was based on the basis of invoices/ bills which clearly revealed that the party not only collected the rent of the hoardings, they have also collected all the costs incurred while preparing these hoarding and putting them for display at the specified place for the specified time period."

3.1 We have heard Shri A.K. Choudhary learned Authorised Representative appearing for the revenue and Shri Shambhu Chopra Learned Counsel appearing for the respondent.

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

4.2 We find that the issue involved in the present case vis-à-vis the differences noted in third party information i.e. form 26AS received from Income Tax Department and ST-3 returns filed by the appellant. The said differences has been explained by the respondents by stating that the differences are on account of sale of space for advertisement in the form of charge of holdings/banners etc. in the fresh sale of space for Advertisement are not subjected to service tax, as they fall under the negative list under Section 66D (g). The said entries were reproduced bellow:-

> ***"66D. Negative list of services.***
>
> *The negative list shall comprise of the following services, namely:-*
>
> > *(a) ……………………………..*
> >
> > *(b) …………………………..*
> >
> > *(c) ……………………………..*
> >
> > *(d) -------------------*
> >
> > *(e) …………………………….*
> >
> > *(f) ……………………………..*
> >
> > *(g) selling of space for advertisements in print media;*
> >
> > *(h) ……………………………."*

4.4 In the case of Anu Image Makers Advertising Co. Pvt. Ltd. [FINAL ORDER NO.70125/2024 dated 12.03.2024] we have observed as follows after taking the note of clarification dated 01.07.2012 issued by the Board:

> ***"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?

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

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*."*

4.5 We also note that appellant have already paid the service tax in respect of other charges recovered by them from their clients towards mounting of hoardings/ banners etc. The differences between the income shown in form 26AS received from Income Tax Department and the taxable value as per ST-3 returns filed by the appellant has been duly explained on the basis of Section 66D (g) of Finance Act, 1994, as have been correctly observed in the impugned order, we do not find any merits in this appeal filed by the revenue.

5.1 Appeal filed by the revenue is dismissed. Cross Objection also gets disposed of.

(Dictated and pronounced in open court)

(P.K. CHOUDHARY)
MEMBER (JUDICIAL)

(SANJIV SRIVASTAVA)
MEMBER (TECHNICAL)

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