IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL,
REGIONAL BENCH : ALLAHABAD

1-2) ST/52034/2015-CU[DB], ST/117/2012-CU[DB]

(Sl.No.1) (Arising out of Order-in-Original No.17-18/ADC/LKO/2014-15 dated 28.05.2014 passed by Commissioner, Central Excise, Lucknow.)

(Sl.No.2) (Arising out of Order-in-Original No.14/COMMR./LKO./ST/2011 dated 15.09.2011 passed by Commissioner, Central Excise & Service Tax, Lucknow.)

M/s. Kadam Advertising And Marketing Pvt.Ltd.

…APPELLANT(S)

VERSUS

Commissioner of Central Excise & Service Tax, Lucknow

RESPONDENT (S)

APPEARANCE

Shri Dharmendra Kumar, C.A. for the Appellant (s)
Shri Gyanendra Tripathi, Asstt.Commr.(A.R.) for the Revenue

CORAM:

MRS. ARCHANA WADHWA, HON'BLE MEMBER(JUDICIAL)
SHRI ANIL G. SHAKKARWAR, HON'BLE MEMBER(TECHNICAL)

DATE OF HEARING : 11.12.2018
DATE OF PRONOUNCEMENT : 31.01.2019

FINAL ORDER NO.70212-70213/2019

Per Mrs.Archana Wadhwa :

After hearing both sides duly represented by Shri Dharmendra Kumar, learned C.A. for the appellant and Shri Gyanendra Tripathi, learned Asstt.Commr.(A.R.) for the Revenue, we find that the appellant is engaged in providing 'Advertising Agency Services' which is a taxable service in terms of Section 65(105)(e) of the Finance Act, 1994 *('Act' for brevity)*. On scrutiny of Appellant's balance sheet and ST-3 returns for the period 2010-11 & 2011-12, it was found that the amount of 'payments received', as shown in P & L account of the balance sheet was different from the 'taxable value', shown in ST-3 returns. A view entertained by the Department that the Appellant has mis-declared the taxable value in their ST-3 returns, thus, willfully suppressed the material information from the Department with intent to evade the payment of service tax.

2. Accordingly, two show-cause-notices i.e. dated 19.10.2011 for the period 2010-11 and dated 10.10.2013 for the period 2011-12 respectively, were issued to the Appellant proposing the recovery of service amounting to Rs.30,48,307/-, in-toto, along with interest and penalty. Incidentally, the second SCN (*i.e. dated 10.10.2013)* was also incorporative of some additional liabilities viz. (i) the difference of service tax amount, as reported in ST-3 returns and as evident from the corresponding GR-7S; and (ii) the service tax on the amount of debts recovered by the Appellant during 2011-12.

3. The said show cause notices were confirmed by the original adjudicating authority. The appellants contested the demands on the grounds that they are also engaged in the preparation of hoardings and banners according to customer's specifications which cannot be considered to be 'advertisement service'. They also submitted that said hoardings and banners suffered sales tax and as such not liable to Service Tax. They further contested that the Service Tax cannot be

levied on unrealized amounts shown as sundry debtors shown in the audited balance sheets. The Commissioner(Appeals) did not find favour with the above contentions and held that the activity of the appellant did not amount to sale of time and space and the same would be covered by the definition of advertisement agency. He also observed that the appellants have not been able to produce any evidence on record to show that they were rendering services with regard to display of the said material. As regards payment of VAT, he observed that the appellants could produce only few bills and did not produce all the bills along with work orders and purchase orders. Similarly as regards sundry debtors he observed that it was a ploy adopted by the assessee to suppress the value.

4. Learned C.A. appearing for the appellant has brought to our notice a subsequent order of Commissioner(Appeals) being Order-in-appeal No.318/ST/APPL/LKO/2017 dated 14.11.2017, wherein the appellate authority has observed that the activity of the appellant fall under the activity of "selling of time and space for advertisement", which was not taxable w.e.f. 01.07.2012. Inasmuch by the subsequent order of Commissioner(Appeals) has held in their favour and inasmuch as the appellate authority in the present appeal has observed that the appellants have not been able to prove their pleas by production of documentary evidences, we deem it fit to set aside the impugned order and remand the matter to the original adjudicating authority for verification of the pleas raised by the assessee, after giving them an opportunity to put-forth their case. Needless to say that appellant

would produce all the documentary evidence in support of their various contentions.

Appeals are thus allowed by way of remand.

(Pronounced in the open Court on 31.01.2019.)

SD/
(ANIL G. SHAKKARWAR)
MEMBER(TECHNICAL)

SD/
(ARCHANA WADHWA)
MEMBER (JUDICIAL)

sm