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

**ST/Stay/51711/2014**
**ST/51415/2014-CU[DB]**

(Arising out of Order-in-Original No.KNP-EXCUS-000-COM-017-13-14 dated 06.12.2013 passed by Commissioner, Central Excise & Service Tax, Kanpur.)

M/s. Avcom Media Pvt.Ltd.

…APPELLANT(S)

VERSUS

Commissioner of Central Excise & Service Tax, Kanpur

RESPONDENT (S)

APPEARANCE

Shri Dharmendra Srivastava (C.A.) for the Appellant (s)
Shri Mohd. Altaf (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/DATE OF DECISION : 04.12.2018

FINAL ORDER NO.72774/2018

**Per Mrs.Archana Wadhwa :**

As per facts on record M/s.Avcom Media Pvt.Ltd. is an advertisement agency duly registered with the department and discharging Service Tax liability in respect of advertisement created by it or the activities which are covered by the definition of advertising agency.

In addition the appellant is also acting like a middleman between his clients and print media. He receives the advertising material from his clients and forwards the same to print media for further printing etc.. The amount collected by the appellant from his clients is paid to

the print media, after retaining 15% of the same as his commission. The appellant was discharging Service Tax on the said 15%, so retained by him.

Further the appellant was also collecting and forwarding advertisement to electronic media on commission basis and was paying Service Tax on an amount of 85% which stands paid to the electronic media. The electronic media was further paying Service Tax on the said activity under the category of 'sale of space' and was raising the invoices in favour of the appellant. The appellant was availing the credit of Service Tax so paid by the electronic media and was utilizing the same for payment of Service Tax under the category of 'advertisement agency services'. This Service Tax paid by the electronic media was also being collected from their clients.

2. In respect of print industry, Revenue entertained a view that the appellant's payment of Service Tax on 15% of the commission received by them is not proper and they should have discharged the Service Tax on the full value of 100%. In respect of electronic media, Revenue was of the view that inasmuch as the invoices raised by the electronic media, though were in the name of the appellant, but also included the name of the customers, the availment of credit by the appellant was not correct. It was also the Revenue's view that instead of paying Service Tax on 85% the appellant should have paid Service Tax on the full amount including the commission amount retained by them.

3. Accordingly proceedings were initiated resulting in passing of the present impugned order confirming the Service Tax on both the above counts and imposing penalties.

4. As regards the first issue, learned C.A. has contended that the payment of Service Tax even on the commission of 15% retained by them was not required to be paid inasmuch as they have merely collected and forwarded the advertising material to the print media for further printing. There is no creativity involved and they acted like a businessman. In such a scenario, he submits that inasmuch as the activity was not covered under the category of "advertising agency services", the demand on the balance 85% is not justified.

He also submits that in any case and in any view of the matter, the 85% collected by them is further transferred to the print media as their cost for printing the advertisement. As such the same cannot be considered to be a consideration for the services provided by him to his customers so as to levy the same to the Service Tax.

In respect of his above submission he has placed strong reliance on Board's Circular No.F.No.345/4/97-TRU dated 16.08.1999 and Circular No.354/28/2007-TRU dated 23.08.2007. In addition our attention stands drawn to the Tribunal's decisions in the following cases:-

*(i) Euro RSCG Advertising Ltd. v. Commissioner of CST, Banglore [2007 (7) S.T.R. 277 (Tri.-Bang.)]*

*(ii) MCCANN Erickson (India) Pvt.Ltd. v. Commr. of S.T., Delhi [2008 (10) S.T.R. 365 (Tri.-Del.)]*

*(iii) Zee Telefilms Ltd. v. Commr. of Central Excise, Mumbai-IV [2004 (170) E.L.T. 157 (Tri.-Del.)]*

*(iv) Market Chase Advertising v. Commr. of C.Ex.Madhurai [2008 (10) S.T.R. 598 (Tri.-Chennai)]*

He also clarifies that though the adjudicating authority's attention was drawn to the said decisions, but there is no consideration of the same by the adjudicating authority.

5. After hearing the learned A.R. for the Revenue and after going through the said decision relied upon by the learned C.A., we note that as the disputed issue stands considered by the Tribunal in the said decisions, it was legally obligatory on the part of the adjudicating authority to go through the same and follow the decisions. Similarly the Circulars issued by the Board with which the authorities working under the C.B.E.C. are bound, as per settled law, should have been taken into consideration. Having not done so, we feel that the impugned order is required to be set aside and the matter needs to be remanded to the adjudicating authority for fresh decision in the light of the judgements relied upon by the appellant as also the Circulars.

6. As regards the second issue, learned C.A. submits that they are ready to pay tax on the full 100% value collected by them from their customers and further forwarded to the electronic media. As regards the Cenvat Credit, he submits that the invoices issued by the electronic media are clearly in their name and the addition of the name of the customers would not make them invalid documents for the purpose of availment of credit. We agree with the learned Advocate on the said count. As long as the invoices show the appellant's name, they would be eligible documents for the purpose of Cenvat credit. However, as the matter stands remanded for the first issue, we direct the adjudicating

authority to re-consider the said issue or any other small issue available in the matter and to re-decide the same in the light of various other decisions also. The appellant is at liberty to produce or to rely upon any other judgements or documents etc. for which an appropriate opportunity would be given to them. The appeal is thus allowed by way of remand. Stay Petition also gets disposed of.

(Dictated and pronounced in the open Court.)

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

SD/
**(ARCHANA WADHWA)**
**MEMBER (JUDICIAL)**

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