CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, ALLAHABAD

REGIONAL BENCH : COURT NO.I

Service Tax Appeal No.599 of 2012

(Arising out of Order-in-Original No.29/Commr/LKO/ST/2011-12 dated 06.01.2012 passed by Commr., Central Excise & Service Tax, Lucknow.)

M/s. Mega Trends Advertising Ltd.
(3/305, Vishal Khand, Gomti Nagar,
Lucknow)

...Appellant

VERSUS

Commr. of Central Excise & Service Tax, Lucknow
.....Respondent
(Ashok Road, Lucknow)

APPEARANCE

Shri Bipin Garg (Advocate) & Ms. Stuti Saggi (Advocate) 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)

FINAL ORDER NO.70965/2019

DATE OF HEARING : 21.02.2019
DATE OF DECISION : 16.05.2019

MRS. ARCHANA WADHWA :

As per facts on record, the appellant is engaged in providing advertising services, for which he is duly registered with the Service Tax department.

2. The appellant's balance sheet/profit and loss account for the period October, 2005 to March, 2010 was scrutinized by the Revenue and as the same was reflecting excess income, a view was undertaken that the appellant was evading payment of Service Tax. Accordingly

they were asked by his jurisdictional Superintendent to provide an explanation. The appellant replied that their business operations consists of two different parts – one making of sale and supply of material chargeable under VAT and the other is for installation, repair or advertising board and endorsement of cricketers. Whereas they are discharging their Service Tax liability on installation of hoardings etc. as also on endorsement of cricketers, no Service Tax is being paid by them on sale and supply of printed flags and glow-sign boards. They explained that for sale supply of flags they have not given any creative component and they have merely carried out operations on the instruction of client for merely printing the given material on the flags printer. The soft copy of the file is provided by their customers and they have not even entitled to change a dot of the design. There is no creativity involved and they act merely as a printer. In such a scenario they contended that the said activity is not covered by the advertising agency activity and the same would not be chargeable to Service Tax.

3. However, the appellants were issued a show cause notice dated 01.04.2011 raising demand of Service Tax of Rs.55,28,870/- on the said activity. Further tax of around Rs.1.30 Lakhs was raised in respect of GTA services, so received by them, on reverse charge basis. Further Service Tax of Rs.2,87,623/- was demanded in respect of the miscellaneous income so received by the appellant in their balance sheet. The notice also proposed confirmation of interest and imposition of penalties. The said show cause notice stand culminated into the impugned order passed by the Commissioner.

4. After considering the submissions made by both the sides and after going through the impugned orders we find that the appellants have undertaken the following three services:-

1) Sales and supply of printed flags and glow-sign boards.
2) Service of installation of hoardings.
3) Endorsement of cricketers.

Whereas there is no demand in respect of Sl.No.2 & 3, the demand pertains to Sl.No.1. It is seen that the appellants were providing the said services to M/s.Vodafone Essar Digilink Ltd., who were paying Service Tax on the supply of printed flags and the same was being deposited by the appellant. However, in respect of the supply of printed flags to the other companies, no such Service Tax was being charged inasmuch as the said buyers were of the view that simply printing and supply of flags would not be covered by the definition of advertising agency.

5. The issue to be decided is as to whether such printing of flags with the advertising material would amount to providing advertising agency services or not. First of all we make it clear that mere payment of Service Tax in respect of such supply to M/s.Vodafone, who were not disputing the same, would not make the appellant's activity as taxable. The issue is required to be decided independently.

Tribunal in the case of Avon Awning v. CCE & ST, Ghaziabad reported as 2017 (51) S.T.R. 33 (Tri.-All.) has held that production of design given by the client on chosen material such as cloth, PVC sheet etc. would not amount to providing any service taxable under the category of advertising agency. The issue stands fully covered by the said decision of the Tribunal.

6. Apart from the merits of the case, we also find that the demand is squarely barred by limitation having been raised by invoking the longer period. The Revenue has picked up the figures from the balance sheet and profit and loss account maintained by the assessee. The balance sheet and profit and loss account has been held to be public documents by various decisions and it stands concluded that when the income arising from various activities stand reflected in the said public documents, it cannot be said that there was any suppression or misstatement on the part of the assessee so as to invoke the longer period of limitation. Reference can be made to Tribunal's decision in the case of C.S.T., New Delhi v. Kamal Lalwani [2017 (49) S.T.R. 552 (Tri.-Del.)], laying down that extended period is not invokable if services rendered are reflected in balance sheet and income tax returns and no evidence stands produced that non-payment of duty was due to any

mala fide. Reference can also be made to Hon'ble Allahabad High Court's decision in the case of Commissioner of Central Tax v. Zee Media Corporation Ltd. [2018 (18) G.S.T.L. 32 (All.)]. The Hon'ble High Court observed that the show cause notice itself shows that every details was maintained by the assessee in usual course of business, the ingredients of proviso to section 73(1) of the Finance Act, 1994, establishing any suppression of facts to evade payment of tax cannot be held to be present and invocation of extended period of limitation was not correct on the part of the Revenue.

7. Inasmuch as all the demands confirmed by the impugned order relatable to different issues stand confirmed by invoking the longer period, we hold that the impugned order is not sustainable on the said ground. Accordingly the same is set aside and appeal is allowed with consequential relief to the appellant.

(Order pronounced in the open court on 16.05.2019.)

(ARCHANA WADHWA)
MEMBER (JUDICIAL)

(ANIL G. SHAKKARWAR)
MEMBER(TECHNICAL)

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