

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
38, MG Marg Civil Lines, Old Red Building, Allahabad-211001
Regional Branch, Allahabad

Dated: 18/10/2016

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. ST/A/70961/2016-CU[DB] dated 03/10/2016

I am directed to transmit herewith a certified copy of order passed by the Tribunal under section 01(5) of the Finance Act, 1994 relating to Service Tax Act, 1994.

Asstt. Registrar

Application	Appeal	Name and Address of Appellant
1	ST/653/2010	AVON AWNING 117/H/Z-B PANDU NAGAR KAKADEO KANPUR, U.P. 208025 Name and Address of Respondent
2		C.C.E. & S.T.-Kanpur 117/H...SARVODYA NAGAR, KANPUR, UTTAR PRADESH- 208005

Copy To3 Advocate(s) / Consultant(s):

DHARMENDRA SRIVASTAVA &
ASSOCIATES, C.A
13/392(I) CIVIL LINES,
KANPUR, UTTAR PRADESH

4 Bar Association, CESTAT, Allahabad

5 Director Publications, Customs, Excise. I.P. Estate, Delhi

6 M/s Centax Publications Pvt. Ltd., 1512-B, Bhishm Pitamah Marg, New Delhi-3

7 Company Law Institute of India Pvt. Ltd., No.2 (old no.36), Vaidhyaram Street, T. Nagar, Chennai-17

8 Taxmann Allied Service Pvt. Ltd., 59/32, New Rohtak Road, New Delhi-110005

9 LAWCRUX Advisors Pvt. Ltd., LAW House, 1-8, Sector-10, Faridabad 121003 (Haryana)

10 TaxIndiaOnline.com Pvt. Ltd., 2nd Floor, Vasam Arcade, Vasant Kunj, New Delhi - 110070

11 Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Hyderabad -- 38

12 The ICFAI society, 52, Nagarjuna Hill, Punjagutta Hyderabad.-500082

13 M/S Knowledge Processing Pvt. Ltd.(taxmanagementindia.com), FF-19, 1st Floor, Cross River Mall, CBD Ground, Near Karkardooma Court, Delhi-110032

14 C.D.R. 15 Office Copy 16 Guard File

Asstt. Registrar

27/10/16
ISSUED ON
 SIGN. (DESPATCH SECTION)
 CUSTOMS, EXCISE & SERVICE TAX
 APPELLATE TRIBUNAL
 38, M. G. MARG, ALLAHABAD-211001.

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

Appeal No.ST/653/2010-CU[DB]

Arising out of Order-in-Original No.01/ST/COMMR./2010 dated 16.02.2010
passed by Commissioner Central Excise & S. Tax, Kanpur.

For approval and signature:

HON'BLE MR. ANIL CHOUDHARY, MEMBER (JUDICIAL)
HON'BLE MR. ANIL G. SHAKKARWAR, MEMBER (TECHNICAL)

1. Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982? : No
2. Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not? : Yes
3. Whether His Lordship wishes to see the fair copy of the Order? : Seen
4. Whether Order is to be circulated to the Departmental Authorities? : Yes

M/s Avon Awning (Proprietor Late Nand Kishore Chaddha, through legal heir
Smt. Krishna Chaddha)

...APPELLANT(S)

VERSUS

Commissioner of Central Excise & S. Tax, Ghaziabad

...RESPONDENT (S)

APPEARANCE

Shri Dharmendra Srivastava CA for the Appellant (s)
Shri Krishrenda Chaudhari Supdt. (A.R.) for the Department

CORAM:

HON'BLE MR. ANIL CHOUDHARY, MEMBER (JUDICIAL)
HON'BLE MR. ANIL G. SHAKKARWAR, MEMBER (TECHNICAL)

DATE OF HEARING & PRONOUNCEMENT : 03.10.2016

FINAL ORDER NO. - 70961/2016



Per Mr. Anil Choudhary :

The appellant, M/s Avon Awning, is a sole proprietorship concern, is engaged in providing/manufacture of advertisements boards, display banners etc. They are in appeal against Order-in-Original No.01/ST/COMMR./2010 dated 16.02.2010 passed by Commissioner Central Excise & S. Tax, Kanpur, demanding Service Tax of Rs.85,13,113/- along with interest and further penalty under Section 76, 77 & 78 of the Finance Act, 1994.

2. The brief facts are that the appellant carries on the business of manufacture and trading of advertisement material including preparation of flex printed, backlit banners, flex board and unlit etc. The learned counsel for the appellant have drawn our attention to Para 21.5 of the impugned order, wherein the Ld. Commissioner have recorded that in this case it is a matter of fact that the assessee is re-producing the material as per design given to it by their client, on the chosen materials such as cloth, PVC sheet, etc. It is also true that in contrast to advertising professionals who visualize or conceptualize how the given material (text or pictures or designs) should be presented the assessee is concerned with only re-producing the material taking into consideration the given guidelines in terms of size of lettering, placement of letters or pictures etc. Moreover, no evidence is produced from the Department's investigation to confirm the assessee is carrying out the activity of designing, visualizing or conceptualizing the material, which appears on the



awnings/sign boards/hoardings. In absence of corroborative evidence, it is further observed that it is not possible to hold the assessee responsible for certain activities. Thus, based on the facts of the present case and the Board's Circular and legal decisions, it have been held that since the assessee's activities are mere re-production or printing, not involving designing, visualizing and conceptualizing, the party is not engaged in providing two of the four services elements i.e. (a) making, and (b) preparation of advertisements, that are relevant to an Advertising Agency. Considering the other aspect of display or exhibition, Ld. Commissioner observes that the assessee's activities include delivery, installation and display of the awnings/sign boards/hoardings at the chosen premises. It is further observed that the appellant have admitted on record that after completion of the activity of the installation and display a satisfactory/installation certificate is issued, which bears the signature of the employees of the assessee as well as their client. It is only after this certificate is issued that the assessee gets its payment. Accordingly, it was concluded that there is no doubt that installation and display of the advertisement is a necessary requirement for the completion of the work order placed with the assessee. So far as invocation of extended period of limitation is concerned, it is observed that the appellant had protested the same on the ground that they were under bona fide belief that no service tax is payable by them. Reliance have also placed by the appellant on the case of Tecumseh



Products India Ltd. Vs. C.C.E. reported at 2004(167) E.L.T. 498 (SC), which deals with a bona fide dispute in regard to the question whether an activity involved any manufacturing activity or not, which is clearly not applicable in the present case. The Ld. Commissioner have held the extended period to be invocable and accordingly confirmed the duty with interest and penalty. Being aggrieved, the appellant is in Appeal before this Tribunal.

3. Heard the parties.

4. In the course of hearing, the Ld. counsel for the appellant took us through the sample purchase orders and invoices placed at pages 193 to 202 of the paper book, wherein it is evident that neither any purchase order have been issued on the assessee/appellant for conceptualizing, designing, preparation or display nor the appellant have raised invoices for the same. The appellant have raised invoices for printing and supply of flex sheets, boards etc. for the purpose of display as per the order and have also charged Sales Tax/VAT on the full invoice value. We also put enquiry to the LD. AR for revenue as to whether there is any evidence of receipt/collection of charges towards display or exhibition and installation by the Appellant. But, no instance of any levy or collection of such charges could be pointed out from the facts on record.

5. The Ld. AR for Revenue has pointed out from RUD-4 at Page 76 of the paper book, wherein in the purchase order by Exide Industries Ltd. on the appellant, under the terms and condition

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No.5, it is mentioned prices are inclusive of installation charges.

The purchase order is for 18 no. of Glow Sign Board as per specification and the design.

6. We also find from the purchase order of Hindustan Coca Cola Marketing Co. Pvt. Ltd. at Page 198, in the purchase order, it is mentioned including fixing at site, is different from display or exhibition. Display or exhibition includes an activity in the nature of providing space for advertisement or displaying advisement like in the case of cinema slides or an advertisement making vehicle moving around, etc.
7. The counsel for the appellant has also relied on the ruling of coordinate Bench of this Tribunal in the case of Ajanta Fabrication Vs. CCE reported in 2006(4) STR 605 (Tri-Delhi), wherein under similar activity of making of hoardings, sign boards & signage, design of signage and their colour schemes etc. provided by the purchaser. This Tribunal held that the appellant is not equipped for functioning as an advertising agency and thus, the services rendered by the appellant did not part take of or include the services in the nature of designing, conceptualizing, visualizing, normally rendered by the Advertising Agency. The extended definition, cannot bring an entirely alien and unconnected services or a manufacturing activity within scheme of levy of service. And accordingly held that Ajanta Fabrication was not covered within the ambit of Service Tax under the classification Advertising Agency.

[Handwritten signature]

(Dictated and Pronounced in the open Court)

(ANIL CHOUDHARY)
MEMBER (JUDICIAL)

2010/10/10 / Certified True Copy
 [Signature]
 VICTORIA - [Signature] / [Signature] Registrar
 2010/10/10 / 2010/10/10
 [Signature] (SOLICITOR)
 [Signature] / [Signature]
 [Signature] / [Signature]

