FAX : 0532-2400149 REGISTERED / AD

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

Dated: 20/12/2016

To

Appellant as per address in table below
Respondent as per address in table below

Final Order No. ST/A/71142-71145/2016-CU[DB] dated 28/11/2016

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/Stay/1353/2010	ST/732/2010	**KANTA INCORPORATION** 117/O/396, Geeta Nagar, Kanpur.
2	ST/Stay/2089/2011	ST/1014/2011	**KANTA INCORPORATION,** 117/O/396, GEETA NAGAR, KANPUR (U.P.)
3	ST/COD/50083/2015	ST/50176/2015	**Kanta Incorporation** 117/0/396, Geeta Nagar, KANPUR UTTAR PRADESH
4		ST/70155/2015	**Kanta Incorporation** 117/o/396, Geeta Nagar KANPUR U.P.

	Name and Address of Respondent
5	C.C.E. & S.T.-Kanpur 117/7...SARVODYA NAGAR, KANPUR, UTTAR PRADESH-208005
6	-C.C.E. KANPUR 117/7, Sarvodaya Nagar, Kanpur 208005.
7	C.C.E. & S.T.-Kanpur

117/7...SARVODYA NAGAR,
KANPUR,
UTTAR PRADESH-208005

8 -C.C.E. KANPUR
117/7, Sarvodaya Nagar,
Kanpur 208005.

Other Appellants and Respondents as per Annexure

Copy To
9Advocate(s) / Consultant(s):

V. Lakshmi Kumaran, ALD
3/1A/3 OPP AUTO
SALES,Above the Office Of
Blue Dart/DHL Courier,
COLVIN ROAD, LOHIA
MARG ALLAHABAD-
211001

AMIT AWASTHI
ADVOCATE
7/116A, H-1, 1ST FLOOR,
RADHEY APARTMENT,
SWAROOP NAGAR,
KANPUR- 208002

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10 Bar Association, CESTAT, Allahabad

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

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

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

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

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

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

17 Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Hyderabad – 38

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

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

20 C.D.R. 21 Office Copy 22 Guard File

Asstt. Registrar

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

COURT-I

Appeal Nos. ST/732/2010, 1014/2011, 50176/2015 & 70155/2015-CU-DB

Arising out of 02/ST/COMMR./2010 dated 23.02.2010, OIO No. 07-08/COMMR./ST/2009 dated 31.03.2011, KNP-EXCUSS-000-COM-005-14-15 dated 28.08.2014 & KNP-EXCUSS-000-COM-005-15-16 dated 28.08.2015 all passed by Commissioner, Central Excise & Service Tax.

i) Kanta Incorporation.
ii) Kanta Incorporation.
iii) Kanta Incorporation.
iv) Kanta Incorporatoin

...APPELLANTS

VERSUS

i) C.C.E. & S.T., Kanpur.
ii) C.C.E., Kanpur.
iii) C.C.E. & S.T., Kanpur.
iv) C.C.E. & S.T., Kanpur.

...RESPONDENT

APPEARANCE

Shri Atul Gupta, Advocate for the Appellants.
Shri Rajeev Ranjan, Joint. Commr. (A.R.) for the Department

CORAM:

HON'BLE MR. JUSTICE (Dr.) SATISH CHANDRA, PRESIDENT
HON'BLE MR. ANIL G. SHAKKARWAR, MEMBER (TECHNICAL)

DATE OF HEARING : 28. 11. 2016

ORDER PRONOUNCED ON : 08/12/2016

FINAL ORDER NO. 71142 to 71145/2016

सीमा शुल्क, उत्पाद एवं सेवा कर अपील अधिकरण CUSTOMS EXCISE & SERVICES TAX APPELLATE TRIBUNAL

Per Anil G. Shakkarwar :

The brief facts of the case are that the appellants are engaged in the work of fabrication, erection, installation, transportation, site civil work, supplying and fixing, repairing, fixing with pipes, painting and installing with iron structure, signages, sign boards, glow sign boards, flex board, flex sheets, sticker etc. which are having the names and logo of respective customers to advertise and promote their names, brand and business. It appeared to Revenue that the above stated activity is covered by advertising agency services defined in Section 65(105)(e) of the Finance Act, 1944. Therefore, the appellants were issued with various show cause notices as follows :-

a) Show cause notice dated 22.04.2009, demanding Service Tax of Rs. 1,47,92,996/- under the category of advertising agency service for the period from 01.01.2003 to 30.09.2008.

b) Show cause notice dated 19.03.2010 demanding Service Tax of Rs. 89,29,353/- under the same category of service for the period October, 2008 to December, 2009.

c) Show cause notice dated 09.02.2011 for the period from January, 2010 to November, 2010 demand Service Tax of Rs. 42,79,257/-.

d) Show cause notice dated 19.07.2012 for the period from August, 2011 to February, 2012 demanding Service Tax of Rs. 27,77,566/- under the category of same service.

e) Show cause notice dated 24.09.2013 for the period from March, 2012 to January, 2013 demanding Service Tax of Rs. 52,52,190/- under the service of same category.

f) Show cause notice dated 26.09.2014 for the period from February, 2013 to March, 2014 demanding Service Tax of Rs. 51,28,517/- under Section 65B(44) of the Finance Act, 2012.

2. The contention of Revenue was that appellant was providing advertising agency service. The contention of the appellant before the Original Authority was that on the full amount received by their clients they were paying VAT and the total activity of the work under taken was under a contract and they were not involved in designing, visualizing and conceptualizing and therefore their services was not covered by advertising agency service. They further contended that their primary engagement was in repairing sign board and signage on the design provided by Indian Railways and Indian Road Congress. In addition they had civil works to be performed and painting zebra crossings. They also contended that they were supplying furniture to NHAI and Municipal Corporation on the sale they paid VAT. They further contended that because of the fact that there was no involvement of designing, visualizing and conceptualizing their activity did not get covered by the definition of advertising agency service. The Original Authority did not appreciate the argument put forth and confirmed the demand. The demands were confirmed through OIO No. 02/ST/COMMR./2010 dated 23.02.2010, OIO No. 07-08/COMMR./ST/2009 dated 31.03.2011, KNP-EXCUSS-000-COM-005-14-15 dated 28.08.2014, KNP-EXCUSS-000-COM-005-15-16 dated

28.08.2015. Through the above stated four Order-in-Original the demands raised through the above stated show cause notices were confirmed. Aggrieved by the said OIOs, the appellant preferred above stated four appeals before this Tribunal.

3. Heard the learned counsel for the appellant. He has contended as follows :-

> *"1. The main business of the Appellant is to mark the Road by paint and fix cat eye for various Government Authorities, to supply signal sign boards alongwith civil work to install the same. Such painting has to be done as per Specific designs prescribed by various Standards of the Governments. Further, signboards or signal boards are also prepared as per design specified by Government Standards.*
>
> *2. The appellant is also engaged in manufacture and selling of Signboards and signage as per design provided by the costumers and registered with the Trade Tax Department.*
>
> *3. It is an admitted fact that the appellant has no discretion for any variation in the design in painting or manufacturing signage boards.*
>
> *4. The intention in such contract is to manufacture the goods as per specifications of the customers. Though even if such boards are installed in some cases, the activity amounts to manufacture, which is not subject to Service Tax.*
>
> *5. Further, when the Appellant is not carrying out the activity of designing, visualising or conceptualising the material which is present in work provided by them, then the activity of the Appellant cannot be considered as an advertisement agency which is providing services in relation to advertisement. The Appellant is not engaged in exhibition or display, in some cases it simply fixes such material as per direction of the customers.*
>
> *6. The Appellant paid VAT on full value of the transaction also establishes that the activity was of the manufacture and sale.*
>
> *7. In any case the cost of material cannot be subjected to service tax when dominant intention is to manufacture and sale the goods."*

He has further relied on this Tribunal's Final Order No. 70961 of 2016 dated 03.10.2016 and contended that said final order is squarely applicable in the present case.

4. Learned A.R. has supported the impugned Orders-in-Original.

5. Having considered the rival contentions, we find that the appellant is not engaged in the activity of designing, visualizing or conceptualising the material which is present in the work provided by them. We further find that the final order dated 03.10.2016 passed by this Tribunal is squarely applicable in the present case. This Tribunal has held that if the services rendered by the appellant did not include the service in the nature of designing, conceptualising and visualizing then such activity does not get covered by advertising agency services. Since the activity undertaken by the present appellant does not involved designing, visualising and conceptualising, the services provided by appellant in the present appeals do not get covered by advertising agency service. We, therefore, set aside all the above stated impugned Orders-in-Original and allow all the four appeals. The appellant shall be entitled for consequential relief, as per law.

(Pronounced in open Court on 08/12/2016)

Sd/-

(Anil G. Shakkarwar)

Member (Technical)

Sd/-

(Justice Dr. Satish Chandra)

President

Patel/-

प्रमाणित प्रति / Certified True Copy

23.12

सहायक पंजीकार / Asstt. Registrar
सीमाशुल्क, उत्पादशुल्क एवं सेवा कर
अपील अधिकरण / (C.E.S.T.A.T.)
38, एम. जी. मार्ग, इलाहाबाद-211001
38, M. G. MARG, ALLAHABAD-211001