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

Dated: 06/10/2017

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. ST/A/71166/2017-CU[DB] dated 05/09/2017

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/57581/2013	**Mind Makers Communications P Ltd** A-41a,sector-17, Noida NOIDA UTTAR PRADESH 201301
		Name and Address of Respondent
2		C.C. & C.E. & S.T.-Noida C-56/42...SECTOR 62, NOIDA, UTTAR PRADESH-201307

Copy To

3Advocate(s) / Consultant(s):

S. C. Kamra & Co.
B-2/210 (Basement)
Safdarjung Enclave,
New Delhi
Delhi
110029

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, Opp ICICI Bank of Defence Colony New Delhi-3

7 Company Law Institute of India Pvt. Ltd., No.2 (old no.36), Vaithyaram 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, Vasant 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

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH : ALLAHABAD
COURT No. I

APPEAL No: ST/57581/2013-CU[DB]

(Arising out of Order-in-Appeal No. 397/ST/APPL/NOIDA/2012 dated 26/12/2012 passed by Commissioner (Appeals), Central Excise & Service Tax, Noida)

M/s Mind Makers Communications P. Ltd. **Appellant**

Vs.

Commissioner of Central Excise & Service Tax, Noida **Respondent**

Appearance:

Shri S. C. Kamra (Adv.) with Mr. Kartikeya Narain (Adv.) for Appellant
Shri Rajeev Ranjan (AR) for Respondent

CORAM:

Hon'ble Mr. Anil Choudhary, Member (Judicial)
Hon'ble Mr. Anil G. Shakkarwar, Member (Technical)

Date of Hearing : 05/09/2017
Date of Decision : 05/09/2017

FINAL ORDER NO.- 71166/2017

Per: Anil Choudhary

This appeal is filed by the appellant against impugned Order-in-Appeal No. 397/ST/APPL/NOIDA/2012, dated 26/12/2012 passed by the Commissioner (Appeals), Central Excise & Service Tax, Noida who confirmed service tax demand of Rs.15,89,193/- with interest and equal penalty imposed under Section 76 & 78 of the Finance Act, 1994 for the period 2006-07 to 2010-11.

2. The above said amounts have been confirmed by the adjudicating authority and upheld by the first appellate

authority as service tax liability, on the discounts/incentives that are received by the appellant as an advertising agency from the media would be liable ~~for~~ to the service tax under the category of business auxiliary services.

3. Learned Counsel for the appellant would draw our attention to the following judgments, which squarely cover the issue in dispute:-

(a) P. Gautam & Co. V/s Commissioner of Central Excise, Ahmedabad, reported in 2011 (24) S.T.R. 447 (Tri.-Ahmd.).

(b) Grey Worldwide (I) Pvt. Ltd. V/s Commissioner of Service Tax, Mumbai – 2015 (37) S.T.R. 597 (Tri.-Mum.).

He argued that in both the above cited decisions of this Tribunal, it was held that discount and incentives received by the advertising agency from the print media are not for services and hence, are not taxable under the category of "Business Auxiliary Services."

4. Learned Departmental representative reiterates the findings of the lower authorities and submits that they are liable to pay the service tax as confirmed.

5. We have carefully considered the submissions made by both the sides.

6. The Tribunal in the case of P. Gautam & Co. (cited above), observed as under:-

"It can be seen from the above reproduced findings that the issue regarding whether discounts/incentives given to the appellant as an advertising agency would be liable for the service tax under the business auxiliary services. It is seen and as correctly pointed out by the Learned Counsel that the Coordinate Bench of the Tribunal in the three cases as cited herein above, have held that the discounts/incentives received by the assessee from the print media will not be liable for service tax under the category of advertising agency services. If that be so, the said discounts/incentives itself cannot be considered for the purpose of taxability under the head business auxiliary services as the amounts which are received are in respect of the services provided under the category of advertising agency services and the amount are discounts and incentives and not as charges for services."

7. In view of the forgoing, respectfully following the view taken by the Coordinate Benches in an identical issue, we are of the considered view that the impugned order is liable to be set aside and we do so. The impugned order is set aside and appeal is allowed with consequential relief as per law.

(Dictated & Pronounced in Court)

-Sd/-
(ANIL G. SHAKKARWAR)
Member (TECHNICAL)

-Sd/-
(ANIL CHOUDHARY)
Member(JUDICIAL)

Lks

प्रमाणित प्रति/Certified True Copy
24/10/17
सहायक पंजीकार/Asstt. Registrar
सीमाशुल्क, उत्पाद शुल्क एवं सेवा कर
अपील अधिकरण (C.E.S.T.A.T.)
इलाहाबाद ALLAHABAD-211001