

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

Dated: 02/11/2017

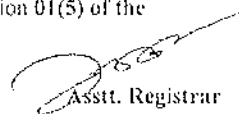
To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. ST/A/71279/2017-CU/DBI dated 29/08/2017

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/70563/2016	P V S Multiplex India Pvt Ltd 328, Kishanpura, Baghpat Road MEERUT U.P.

Name and Address of Respondent

C.C.E. & S.T.-Meerut-I
 EXCISE CHOWK...UNIVERSITY
 ROAD, MANGAL PANDEY
 NAGAR,
 MEERUT,
 UTTAR PRADESH-250005

Copy To

3 Advocate(s) / Consultant(s):

ABHISHEK A. RASTOGI (ADV.)
WITH HARBIR SINGH ADVOCATE
12 SHARK COLONY, OPP SAI
PLAZA, SARDHARNA ROAD,
KANKARKHERA, MEERUT
CANTT, UP-250001

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-47

8 Taxmann Allied Service Pvt. Ltd., 59/32, New Rohak 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 ICAI 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 Second Folder Copy

17 Guard File


 Asstt. Registrar

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

APPEAL No. ST/70563/2016-CU[DB]

(Arising out of Order-in-Original No. 5/ST/PR. COMM. /MRT/2016 dated 15/03/2016 passed by Commissioner of Central Excise & Customs Meerut-I)

M/s PVS Multiplex India Pvt. Ltd.

Appellant

Vs.

Commissioner of Central Excise, Meerut-I

Respondent

Appearance:

Shri Abhishek A. Rastogi, Advocate with
Shri Harbir Singh, Advocate,,
Shri P. K. Dubey, Superintendent (AR),

for Appellant
for Respondent

CORAM:

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

Date of Hearing & Date of Decision : 29/08/2017

FINAL ORDER NO...71279/2017.....



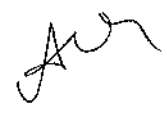
Per: Anil Choudhary

The issue in this appeal is, whether the appellant is liable to pay service tax on the screening of films in their multiplex and also whether they are liable to pay service tax under the head renting of immovable property.

2. Show Cause Notice dated 12/09/2014 was issued demanding service tax for the period 2009-10 to 2012-13 for an amount of Rs.1,34,38,272/- under the service heads namely - (i) Business Exhibition (sale of space) Rs.1,83,214/- which was dropped, (ii) Renting/Business Support Service

Rs.15,98,338/- out of which an amount of Rs.21,55,794/- was confirmed, wherein after appropriation the net demand is Rs.5,10,38/- (iii) Commission on Sale Rs.23,13,431/- which has been dropped in the impugned order (iv) Pure Agent Rs.20,99,179/- which has also been dropped in the impugned order (v) Screening of Films under "Business Support Service Rs.72,44,110/- out of which an amount of Rs.65,26,216/- was confirmed after reducing an amount of Rs.4,72,646/- to words "Repair & Maintenance of Air Conditioners. Thus, the total demand confirmed in the impugned order is Rs.17,92,717/-.

3. Being aggrieved the appellant is before this Tribunal. The first issue is regarding Screening of Films well payment of mode to distributors. On the said payment to distributors which have been shown in the final accounts/profit and loss account of the appellant as 'film software expenses.' The ld. counsel states that on the admitted facts, as contained in Para 9.1 of the impugned order, the appellant operated their cinema theatre in collaboration with the film distributor, namely M/s Mukta Movie - Film Distributors, Mumbai on principal to principal basis. Accordingly, no service tax is exigible on such payment to the distributor. He further points out that in Para 9.1 the ld. Commissioner have observed that the screening activity of films, supplied by M/s Mukta Movie - Film Distributor, has been undertaken by the appellant on 'revenue sharing basis.' In terms of arrangement between the



Film's Distributor and the appellant – theatre owner, after temporary transfer of copyrights of movies, the movies have been exhibited by the appellant. In terms of agreements oral or written, entered into between Film Distributors and M/s PVS – appellant during the period 2009–10 to 2012–13, out of total "Theatre Receipts" of each year, the appellant retained a part of income in lieu of exhibition of Movie. The ld. counsel have also demonstrated from the copyright invoices raised by M/s Mukta Movie – Film Distributor, for the relevant period, wherein the bill is by way of share bill. For example bill dated 1st May, 2010 raised on the appellant by M/s Mukta Movie – Film Distributor, with regard to various films states the amount of net collection by the appellant and the sharing ratio of the distributor in the net collection and thereby arriving at the share payable to the distributor. Thus, there is no ambiguity in the findings of the ld. Commissioner as regards the modus operandi of the appellant. Moreover, the ld. counsel points out, with respect to CBEC Circular No.148/17/2011-ST dated 13/12/2011, wherein in Para 10 by way of summary it is provided that where the arrangement between the Theatre Owner and the Film distributor is on principal to principal basis, i.e. movie being exhibited by Theatre Owner or exhibited on his own account i.e. the copyright or temporary transfer in such case, service under copyright service, is to be provided by the Distributor or Sub-distributor or Areas Distributor or Producer, etc. as the



case may be, is liable to pay Service Tax under applicable service head. Thus, the service tax, if any, is payable by the Distributor of the Film. Accordingly, the Id. counsel prays for deleting the tax liability confirmed under this head.

4. As regards the Renting/Business Support Service. The Id. Counsel explains that their tenants, under the Stay Order granted by Hon'ble Supreme Court in the case of Retailers Association of India *Versus* Union of India & Ors. reported at 2011-TIOL-104-SC-ST, order dated 14th October, 2011 in Civil Appeal No. 8390 of 2011 & Ors. have as per the directions of the Apex Court, deposited the 50% amount of service tax for the period prior to 30/09/2011. So far the demand subsequent to 30/09/2011 is concerned, there is no stay granted, the appellant as property owner is paying regularly and there is no dispute on this score.

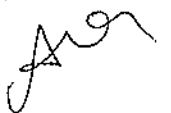
5. As regards the balance demand of Rs.56,114/- the Id. Counsel states that the same is due to the tax being paid on the basis of receipts (cash basis) whereas in the financial accounts/balance sheet and profit and loss account, there have been accounting on accrual basis. For this score, the Id. counsel prays that the matter be remanded back to the Adjudicating Authority for proper reconciliation, in accordance with law.

6. The Id. A. R. for Revenue have relied on the impugned order.

7. Having considered contentions and on perusal of the

facts on record, we are satisfied that there is no dispute of fact that the appellant have been screening films in their multiplex on Revenue Sharing basis, which is undisputed finding recorded by the Id. Commissioner in the impugned order. Accordingly, we hold that the appellant is not liable to pay Service Tax for Screening of Films and payments to distributors in their theatre. We also take notice that the appellant have disclosed the gross amount received from sale of tickets or exhibition of films in their profit and loss account on the credit side and have shown the amounts paid to the distributors on the debit side under the head 'film software expenses.' So far the other head of service is concerned, we allow this appeal by way of remand to the Id. Commissioner, so as to reconcile the payments made by the tenants for the period prior to 30/09/2011. The appellant is also directed to reconcile their accounts and if any amount is payable by them for the period subsequent to 30/09/2011, calculate the same and after depositing the tax, if any, intimate to the Adjudicating Authority. As regards the other issue regarding differential tax demanded Rs.56,114/- as different accounting method in the financial accounts (accrual basis) and ST-3 return, which was on receipt basis, we remanded to the Id. Commissioner to reconcile and direct the appellant to provide the calculation, and to examine the same and be considered in accordance with law.

8. Thus, the appeal is allowed in part and remanded in



part as indicated hereinabove. The appellant shall be entitled to consequential benefits in accordance with law. We also take notice of the fact that the amount of Rs.22,21,130/- was deposited by the appellant under VCES Scheme, the appropriation for the same have been granted by the ld. Commissioner in the impugned Order-in-Original.

(Dictated & Pronounced in Court)

-Sd/-

(ANIL G. SHAKKARWAR)
Member (TECHNICAL)

-Sd/-

(ANIL CHOUDHARY)
Member(JUDICIAL)

Ansari

प्रमाणित प्रति/Certified True Copy

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

