

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
SOUTH ZONAL BENCH
CHENNAI**

Appeal No.ST/21/2011

[Arising out of Order-in-Revision No.12/2010 ST (R) dt. 06.12.2010 passed by
Commissioner of Central Excise, Madurai]

Vasantham Outdoor Advertising Pvt. Ltd.

Appellant

Versus

Commissioner of Central Excise,
Madurai

Respondent

Appearance :

Shri M. Kannan, Advocate
For the Appellant

Shri R. Subramaniyan, AC (AR)
For the Respondent

CORAM :

Hon'ble Shri Madhu Mohan Damodhar, Member (Technical)
Hon'ble Shri P. Dinesha, Member (Judicial)

Date of hearing / decision : 13.08.2018

FINAL ORDER No. 42261 / 2018

Per Madhu Mohan Damodhar

The facts of the case are that the appellants were registered with the service tax department under the category of "Advertising Agency Service". Appellants were engaged in renting of hoardings. Pursuant to audit, appeared to the department that appellants have received some amounts towards renting of hoardings which would fall under the category which are nothing but providing

advertising on sub-contract basis, hence would be exigible to service tax under Section 65 (3) of the Finance Act,1994. Accordingly, a SCN dt. 26.05.2008 was issued to appellants, inter alia proposing demand of service tax liability of Rs.2,40,108/- with interest thereon and imposition of penalty under various provisions of law. In adjudication, the original authority vide the order dt. 06.05.2009 held that appellants had only rented out hoardings that they collected rental charges from other advertising agencies and hence proceedings were initiated in the SCN. A revision notice dt. 08.06.2010 was issued to appellants which culminated in an order dt. 06.12.2010 where the revision authority held that the services rendered by the appellants are liable for tax under advertising agency service, demanded service tax liability of Rs,2,44,910/- with interest thereon and imposed equal penalty under Section 78 of the Act. Aggrieved, appellants are in appeal before this forum.

2. Today when the matter came up for hearing, on behalf of the appellant, Ld.Advocate Shri M.Kannan draws our attention to para-13 of the order of original authority where the said authority found that appellants were renting out hoardings of two advertising agencies for display of advertisements and were charging rent. He submits that the original authority correctly relied upon the Tribunal decisions in *Yespi Arts* - 2008 (12) STR 331 (Tri.-Bang.); *Hitech Publicities* - 2008 (11) STR 140 (Tri.-Chennai); *Prism Ads.* - 2006 (2) STR 501 (Tri.-Mumbai) and *Rex Advertisers* 2006 (2) STR 330 (Tri.-Bang.).

3. On the other hand, Ld. A.R Shri R. Subramaniyan supports the impugned order. He draws our attention to Tribunal decisions in *Shriji Ads* - 2008 (10) STR 257 (Tri.-Chennai); *Gypsy Advertising Co.* - 2004 (171) ELT 271 (Tri.-Del) and

the decision of Advance Rulings Authority in Re. *Google Online India Private Ltd.* - 2006 (1) STR 53 (A.A.R). He also draws our attention to para 7.3 of the impugned order where the revision authority has correctly pointed out that if the services of the appellant do not come within the purview of levy of advertising service the statutory provision relating to that levy on “any connected service relating to advertisement display / exhibition” would become absolutely meaningless.

4. Heard both sides and have gone through the facts.

5.1 From the facts on record, it is evident that the appellant was only renting out the hoardings which were either owned by them or leased to them, to various advertising agencies. There is no allegation that appellant had themselves made prepared displayed or exhibited any advertisings on their own. There is no dispute that the advisements which may have appeared on the hoardings are those that were prepared by the concerned advertising agencies and certainly not by the appellants. The appellants have only rented out these hoardings to the concerned advertising agency. The definition of “Advertising Agencies” in Section 65 (3) *ibid* does include the phrase “any service connected with”. Discernably, this phrase has to be read in keeping with the principle of *ejusdem generis*. Where a law lists specific class of persons or things and then refers to that in general, the general statements only apply to the same kind of persons or things specifically listed out. In their landmark judgment in *Kavalappara Kottarathil Kochuni. vs The State Of Madras And Others* - AIR 1960 SC 1080 (Constitution Bench), the Hon’ble Supreme Court opined that “*The rule is that when general words follow particular and specific words of the same nature, the general words must be confined to the things of the same kind as those*

specified. But it is clearly laid down by decided cases that the specific words must form a distinct genus or category.” The same view was reiterated by the Hon’ble Apex Court in *Amar Chandra Chakraborty - AIR 1972 SC 1863* and in *Maharashtra University of Health Vs Satchikista Prasarak Mandal & Ors.* Order dt. 25.02.2010 in Civil Appeal No.2050 of 2010 where the Hon’ble Supreme Court reiterated that the principle *“arises from linguistic implication by which words having literally a wide meaning (when taken in isolation) are treated as reduced in scope by the verbal context.”* The Supreme Court further concluded that *‘the principle is presumed to apply unless there is some contrary indication. It may be regarded as an instance of ellipsis, or reliance on implication’.*

5.2 If we apply the takeaways from the above judgements, it is evident that “any service connected with”, the making, preparation, display or exhibition of advertisement must obviously be a service of the same nature or generis. When the category of service concerns and involves creativity and even specifically seeks to include “advertising consultant”, it would be too farfetched to bring in renting of hoardings within the scope of such service.

5.3 We find that the Tribunal decisions referred to by the original authority have also taken the same view. Even in a recent Tribunal decision of CESTAT Chennai *Chaya Lakshmi Creations Pvt. Ltd. Vs CST Chennai - 2017 (8) TMI 1117 – CESTAT Chennai* where also the issue of renting of space for display of advertisements at various places of theatre complex in the form of hoardings etc. was addressed, it was held that the said activities cannot be regarded as “Advertising Agency Service”. The relevant portion of this decision is reproduced below :

As such, it is clear that what is being taxed is planning and expertise involved in making, preparing display or exhibiting the advertisement and not simply

providing of a place or space to the advertiser. The expression "display" or "exhibit" does not mean the physical act of display and exhibit, but relates to the services rendered, as an expert body, to the client, for the purposes of display or exhibit. The same may involve the expertise of the provider of the services to advise the client as to in which manner, the advertisement should be displayed i.e. whether in the newspaper or on TV channel or by way of hoardings or a audio/video advertisement in air or any other medium or at what point of time the same should be exhibited. We find that no such expert services are being provided by the appellant in the present case. They are merely canvassing their clients to make utilize of the space available with them for the purposes of advertisement of their product during the course of matches, which are going to be telecasted and by which they can popularize their products. As such, the activities amount to sale of space and not as regards advertisement.

15. Our above view also gets support from the fact that another head of "sale of space or time for advertisement and sponsorship services" stands created for the purposes of service tax w.e.f. 1-5-06. However, the taxable services in relation to sponsorship services specifically excluded sponsorship of sport events. As such, we find that a subsequent entry having been enacted covering the activity without any change of the existing entry, has to be interpreted as if the earlier existing entry did not cover the subsequently created entry. If the subsequent entry was covered by the earlier entry, there was no reason or scope to create the present entry especially when the rate of tax in respect of both the entries remains unchanged. Certainly, creation of new entries was not by way of bifurcation of the earlier entry inasmuch as the earlier entry relating to advertisement remains unchanged without any change in the tax rate. As such, the introduction of new tariff entry do imply that the coverage in the new tariff for the purposes of tax was an area not covered by the earlier entry. It was so held in case of Glaxo Smithkline Pharmaceutical Ltd. reported in 2006 (3) S.T.R. 711 (T) = 2005 (188) E.L.T. 171 (Tri.-Mumbai) as also in case of M/s. ZEE Telefilms Ltd. & M/s. Star India (P) Ltd. v. CCE, Mumbai reported in 2006 (4) S.T.R. 349 (Tribunal) = 2006-TIOL-945-CESTAT-MUM. If it is held that the activity of sponsorship and sale of space were covered under the earlier heading of advertising agency, the same would lead to the redundancy of new legislation and would defeat the legislative intent."

8. The Board vide Circular No. 78/8/2004-ST dated 23.3.2004 has clarified that in case of free commercial time, selling the time allotted does not fall within the purview of Advertisement Service since the said activity is not

connected to making, preparation, display or exhibition of advertisement. The Board clarified that such activity will be covered only under Space Selling and not under 'Advertising Agency'. Similar view was adopted by the department in the Board Circular No. 64/13/2003-ST dated 28.10.2003 and Trade Notice No. 99/GL.90/C.E./PRO/CAL-II/99 dated 16.9.1999. Thus, the issue whether any activity which is connected with advertisement but which does not involve actual conceptualizing and preparation of display has been discussed by the Tribunal in several decisions including Zee Telefilms Ltd. 2006 (4) STR 349 as well as the BCCI (supra)."

5.4 The decisions referred to by Ld.AR are Single Member Bench orders and hence will not prevail over the Division Bench decisions which have been passed to the contrary. So also, the Advance Ruling decision cited by him cannot have any precedential value inasmuch as this forum is concerned.

6. In the event and also following the ratio of the decisions and judgements discusses supra, we hold that activities of the appellant cannot be brought within the fold of "Advertising Agency Services" for the purpose of Section 65 (3) *ibid*. This being so, the impugned order to the contrary cannot be sustained and is therefore set aside. Appeal is allowed with consequential benefits, if any, as per law.

(dictated and pronounced in court)

(P. Dinesha)
Member (Judicial)

(Madhu Mohan Damodhar)
Member (Technical)

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