

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

Appeal Nos. ST/546 to 548/2011

(Arising out of Order-in-Original Nos. 2 to 4 of 2011 dated 15.7.2011 passed by the Commissioner of Service Tax, Chennai)

M/s. Prasad Corporation Limited Appellant

Vs.

Commissioner of GST & Central Excise Respondent
Chennai South

Appearance

Ms. Krithika Jaganathan, Advocate for the Appellant
Shri A. Cletus, Addl. Commissioner (AR) for the Respondent

CORAM

Hon'ble Ms. Sulekha Beevi C.S., Member (Judicial)
Hon'ble Shri Madhu Mohan Damodhar, Member (Technical)

Date of Hearing / Decision: **17.12.2018**

Final Order Nos. **43119-43121 / 2018**

Per Bench

Brief facts are that the appellants are engaged in post-production services and provide specialized data processing services to customers according to their specifications. They are engaged in rendering services like creation of special effects, improving the quality of picture or image and convert the digital image file to film etc. For carrying out such work, the appellants received inputs through digital data or digital image files from

their respective foreign customers in back-up tape formats. The department was of the view that these services would come under Video Tape Production Services. Show cause notices were issued for the period from 1.10.2007 to 31.3.2010 demanding service tax under the said category along with interest and also for imposing penalties. After due process of law, the original authority confirmed the demand, interest and imposed penalties. Aggrieved, the appellant is now before the Tribunal.

2. The Id. counsel Ms. Krithika Jaganathan submitted that the activities of the appellant will not fall under Video Tape Production Services. The services rendered by the appellant on which service tax demanded can be briefly described as under:-

a. Computer Graphics:- Primarily, the appellant is engaged in post-production film activity by manipulating recorded images into hypothetical scenes with creation of special effects such as computer graphics.

b. Digital Restoration:- The appellant is also engaged in providing specialized digital restoration services to customers as per their specifications. In other words, the quality of the image or picture is digitally enhanced or restored for archival purposes. Sometimes, images are converted into digital image files for ease of storage or greater clarity.

c. Reverse Telecine:- The appellant also provides services of 'Reverse Telecine' whereby digital image files are converted to 35mm film by processing digital data received on various input media as stated above to increase sharpness as the images are blown up from a low resolution digital format to high resolution film format."

3. The above services are provided to domestic as well as customers located outside India and the appellant has discharged service tax by classifying them under photography services for the services rendered to domestic customers. For

transactions with foreign customers, no service tax was paid as these amounts to export of services. The department has demanded service tax by classifying the activity as Video Tape Production Services. For the activity to fall under Video Tape Production Services, the appellant should be video production agency. The activity of the appellant is digital restoration and reverse telecine, computer graphics etc. and these are not Video Tape Production Services. The very same issue was analysed by the Tribunal in the appellant's own case as reported in 2018 (11)GSTL 104 (Tri. Chennai) for the earlier period where the Tribunal held that the activity does not fall under Video Tape Production Services. She therefore prayed to set aside the impugned order.

3. The Id. AR Shri A. Cletus supported the findings in the impugned order.

4. Heard both sides.

5. The activity of the appellant has been narrated in the paragraphs stated above. The department is of the view that such activities are to be classified under Video Tape Production Services. The Tribunal in the appellant's own case, for a different period had occasion to analyse the issue and has observed as under:-

"4. Heard both sides and have gone through the facts. It is clear that the services performed by the appellant definitely do not involve his recording of any programme, event or function. In fact, this aspect has been considered even by the adjudicating authority in para 5.3 of the order. The

activities of services of Computer Graphics, Digital Restoration, and Reverse Telecine all involving activities on old feature films is definitely a post-production film activity *inter alia*, rendered for service recipients abroad as per their requirements. This being so, we are not able to fathom how the adjudicating authority, having stated that the appellants are not engaged in the recording of any programme etc. has concluded that services or restoration, giving special effects etc. on the old films would be a "Video Tape Production". Ostensibly, the department and the adjudicating authority have been influenced by the second limb of the definition of "Video Tape Production" in Section 65(120) of the Act. The definitions have to be read in totality and part thereof cannot be picked up to justify that the activities performed in the instant case will come under "Video Tape Production Services". That would like putting the cart before the horse. The statutory provisions relating to taxation have to be construed literally without engraving any additional meaning thereto except in very rare cases where, the maxim of *casus omissus* would apply. This is certainly not one of those situations. The definition of "Video Tape Production Service" is very clear and does not offer any ambiguity.

5. Viewed in this light, the services provided by the appellants will certainly not fall under the ambit of "Video Tape Production Services". The impugned order cannot then sustain and will have to be set aside, which we hereby do. Appeal is allowed with consequential benefits, if any, as per law."

6. Following the said decision, we are of the view that the demand of service tax under Video Tape Production Services cannot sustain and requires to be set aside which we hereby do. The appeal is allowed with consequential relief, if any.

(Operative portion of the order was
pronounced in open court)

(Madhu Mohan Damodhar)
Member (Technical)

(Sulekha Beevi C.S.)
Member (Judicial)

Rex