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

ST/MISC/41696/2017 and ST/00134/2010

[arising out of Order-in-Appeal No.142/09 (M-ST) , dated 30.05.2008 passed by the Commissioner of Central Excise (Appeals), Chennai]

M/s. AVM STUDIOS APPELLANT

Versus

COMMISSIONER OF SERVICE TAX, CHENNAI RESPONDENT

(Presently known as ***"Commissioner of GST & Central Excise, Chennai (South) Commissionerate, Chennai"***

Appearance:

For the Appellant Shri S. Muthuvenkataraman , Adv.
For the Respondent Shri P. Arul, AC (AR)

CORAM:

Hon'be Smt. Archana Wadhwa, Member (Judicial)
Hon'ble Shri B. Ravichandran, Member (Technical)

Date of hearing/decision **19-12-2017**

FINAL ORDER NO. 43507/2017

Per Archana Wadhwa:

The above miscellaneous application has been filed by the department seeking amendment to the cause title on the ground that the department is shown in the above appeal with jurisdiction of the Commissioner of Service Tax, Chennai, whereas now the same has been changed as **"The Commissioner of GST & Central Excise, Chennai (South) Commissionerate, MHU Complex, No.692 Anna salai, Nandanam, Chennai – 600 0035."**

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2. After hearing both sides, we note that the appellants have a studio which is well equipped and meant for production of videos etc. The appellants got themselves registered under the category of "Renting of Immovable Property" with effect from 01.06.2007, which registration was granted by the Revenue by accepting that they are engaged in the providing of such services.

3. However, subsequently, they were issued a show-cause notice dated 18.10.2007 raising demand for the period prior to 01.06.2007 alleging that the services being provided by the appellants fall under the category of "Video Production Agency" and as such, the appellants were liable to pay service tax in respect of the same.

4. During the course of adjudication, the appellants contended that they are in ~~any~~ no way concerned or connected with the activities of the firm who are primarily engaged in the production of video and as such do not fall under the definition of such services. However, the Revenue has themselves accepted the fact that the appellants only rented the said premises, which service would fall under the category of "Renting of Immovable Property Service" with effect from 01.06.2007 onwards and the appellants had been discharging their tax liability accordingly. The authorities below did not find favour with the above stand of assessee and accordingly, confirmed the demands and interest and imposition of penalties.

5. On hearing both sides, we find that section 65(119) of the Finance Act, 1994 defines [introduced with effect from 16.07.2007] "Video Production Agency" as follows:-

> *"Video Production Agency" means any professional videographer or any commercial concern engaged in the business of rendering services relating to videotape production;*
>
> Section 65 (120) of the Act *ibid* defines videotape production as *"the process of any recording of any programme, event or function on a magnetic tape and includes editing thereof, in any manner".* With effect from 16.06.2005, this meaning was further expanded the scope of the service of videotape production by defining it as *"the process of any recording of any programme, event or function on a magnetic tape or on any other media or device and includes services relating thereto such as editing, cutting, colouring, dubbing, title printing, imparting special effects, processing, adding, modifying or deleting sound, transferring from one media or device to another, or undertaking any video post-production activity, in any manner."*
>
> The CBEC vide Ministry's letter F.No.b-II/I/2000-TRU, dated 09.07.2001, clarified as follows:-
>
> *"It may be seen that the taxable service covers the service of regarding of any programme, even or function and includes recording of serials, telefilms or any other programme meant for broadcasting. Also, the scope of taxable service covers any service in relating to videotape production ina any manner. Thus, facilitation activities such as, providing studio, other facility as lights, gadgets, instruments, devices, providing technical persons for operating the recording devices or for any other activity in relation to videotape production are taxable."*
>
> In view of the above, with effect from 16.07.2001, the facilitation activity also covered under the category of "Video Tape Production Service." The findings of lower adjudicating authority in this regard are correct and tenable."

6. On going through the above definitions, we note that the same are primarily meant for the persons, who are associated with process relatable to video recording. Admittedly, in the present case, the appellants have simplicitor rented out their premises and in ~~any~~ no way provided their services to the tenant for recording of the video ~~stored~~ and in other activities connected with the recording. As such, as rightly contended by the learned Advocate, the service of giving the studio on rent would fall under the category of "Renting of Immovable Property Service", which came on the statute book with effect from 01.06.2007 and the appellants have been rightly discharging their liability accordingly.

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7. Though, we have held in favour of the assessee on merits, we also find appeal is barred by limitation, inasmuch as, the said fact of renting of studio was brought to the notice of Revenue and there is no evidence indicating any malafide intention on the part of the assessee, so as to to invoke the longer period of limitation.

8. In view of the above, appeal is allowed on merits, as also, on the point of limitation and the impugned order is set aside.

(Dictated and pronounced in open court)

(B. RAVICHANDRAN)
MEMBER (TECHNICAL)

(ARCHANA WADHWA)
MEMBER (JUDICIAL)

ksr
29-01-2018

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