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

ST/00076/2008

[Arising out of Order-in-Original No.02/2008, dated 04.01.2008 passed by the Commissioner of Service Tax, Chennai]

M/s. FIFTH ESTATE COMMUNICATIONS — APPELLANT

Versus

COMMISSIONER OF SERVICE TAX, CHENNAI — RESPONDENT

Appearance:

For the Appellant	Shri V.S. Manoj, Adv.
For the Respondent	Shri A. Cletus, ADC (AR)

CORAM:

Hon'ble Shri D.N. Panda, Judicial Member
Hon'be Shri Madhu Mohan Damodhar, Technical Member

Date of hearing/decision **06-03-2017**

FINAL ORDER NO. 40449/2017

Per D.N. Panda:

Appellant says that the extent of value of the service provided by appellant is only liable to service tax in its hand without making the appellant liable to service tax on the whole of the advertising charge. Appellant was not advertiser. Therefore the consideration received by the advertiser cannot be taxed in the hands of the appellant. Application of the provision of Rule 5 of the Service Tax (Determination of Value) Rules, 2006 to impose service tax on the advertisement not made by the appellant is impermissible when that Rule has been striken done by Hon'ble High Court of Delhi in the case of *Intercontinental Consultants & Technocrats Pvt Ltd Vs Union of India*

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2013 (239) ELT S.T.R. 9 (Del). It was only arranging advertisement for the advertisers without being an advertiser.

2.1 Learned DR says that the appellant provided advertising service to the recipient thereof issuing advertisement bill to them. Total amount of advertisement charge was received by appellant. Therefore that shall be liable to service tax instead of appellant's contention that a percentage thereof shall be taxable in its hands. Appellant's plea is untenable and its appeal is liable to be dismissed.

2.2 Heard both sides and perused the record.

2.3 We make it clear that Finance Act 1994 is not income tax law. Therefore the value of service provided by appellant is taxable in its hand under appropriate taxing entry specified in section 65 (105) of Finance Act, 1996. But the Appellant heavily relying on the decision of the Hon'ble High Court of Delhi in the case of *Intercontinental Consultants (supra)* contended that Rule 5 of Service tax (Determination of Value) Rules, 2006 having been striken down that rule is not applicable to raise service tax demand against appellant. He says that this is also the decision of the Hon'ble High Court of Madras in the case of *Commissioner of Service Tax, Chennai Vs Sangamitra Service Agency* reported in *2014 (33) S.T.R.137 (Mad.)*. When the SCN is looked into it shows that the Authority proposed demand applying Rule 5 but without alleging under which taxing entry he proposed the levy on the appellant.

3.1 The Judgment of Hon'ble High Court of Delhi has been appealed by Revenue before apex Court. That Judgment being in Jeopardy, the matter is remanded to the adjudicating authority to pass appropriate order on the basis of outcome the apex court judgment in the said case. Appellant is entitled to reasonable opportunity of hearing in the course of re-adjudication of the matter. The authority recording the pleadings and defence of the appellant shall pass a reasoned and speaking order.

4. It is submission of the learned departmental representative that all other issues are involved in the appeal which needs resolution. We hope that the adjudicating authority shall consider all the controversies arising out of show-cause notice during readjudication and granting fair opportunity of hearing to the appellant on all such issues shall record defence pleas and evidence and pass appropriate order in accordance with law.

(Dictated and pronounced in open court)

10-03-17

(MADHU MOHAN DAMODHAR)
TECHNICAL MEMBER

10/3/2017

(D.N. PANDA)
JUDICIAL MEMBER

ksr

Customs, Excise & Service Tax Appellate Tribunal

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सीमाशुल्क उत्पादशुल्क एवं सेवा कर
अपील अधिकरण/(CESTAT)
चेन्नै/Chennai