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

Appeal No.ST/158/2010

[Arising out of Order-in-Appeal No.80/2009 (MST) dt. 21.12.2009 passed by the Commissioner of Central Excise (Appeals), Chennai]

R.J. Agencies — Appellant

Versus

Commissioner of Central Excise,
Chennai — Respondent

Appearance:

Ms. Minchu Mariam Punnoose, Advocate
For the Appellant

Shri A. Cletus, ADC (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 : 24.10.2017

FINAL ORDER No. 42375/2017

Per Bench

The facts of the case are that appellants had obtained registration under "Advertising Agency Service". It appeared to the department that for the period April 2005 to March 2007, they had

Customs, Excise & Service Tax Appellate Tribunal short paid service tax liability on advertising services. Accordingly, a show cause notice dt. 09.08.2007 was issued to appellant inter alia proposing demand of differential service tax liability of Rs.3,31,994/- and education cess of Rs.6640/- along with interest thereon and imposition of penalty under Section 76 of the Finance Act. In adjudication, original authority confirmed these proposals. On appeal, Commissioner (Appeals) vide the impugned order dt. 21.12.2009 upheld the original authority's order to the extent of classification of services rendered by the appellant viz. "Advertising Agency Service", however held that appellant is liable to pay service tax only on the commission received from the publishers for the disputed period along with interest, if any, on belated payment. Penalty imposed by the original authority was also set aside. Aggrieved, appellants are before this forum.

2. Today, when the matter came up for hearing, on behalf of appellant, ld. counsel Ms. Minchu Mariam Punnoose submits that SCN had been issued demanding service tax under "Advertising Agency Service", whereas the appellant's activity falls under "Business Auxiliary Service". To buttress her point, Ld. counsel takes us to circular No.96/7/2007-ST dt. 23.08.2007 issued by the CBEC wherein at para 004.01 it has been clarified that merely canvassing

advertisements for publishing, on commission basis, is not classifiable under taxable service falling under Section 65 (105 (e) and that such services are liable to service tax under "Business Auxiliary Service" [Section 65 (105) (zzb)]. In these circumstances, Ld. advocate contests that the services carried out by them cannot be brought under "Advertising Agency Services" and the demand of differential tax liability also cannot sustain.

3. On the other hand, Ld. A.R Shri A.Cletus supports the impugned order. He points out that appellant themselves had obtained registration under 'Advertising Agency Service' and that they had been discharging service tax liability on the amounts of commission received by them. SCN issued only for demanding differential tax liability in respect of short payment of tax.

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

5. Discernably, as clarified by the Board's circular supra, the activities of the appellant would fall not under "Advertisement Agency Service" but only under "Business Auxiliary Service". However, SCN seeks to levy service tax on the taxable value of services rendered under Section 65 (105) (e) of the Finance Act, which pertains to "Advertising Agency Service". In the event, we find merit in the contention put forth by the ld. Advocate. Impugned order to the

Customs, Excise & Service Tax Appellate Tribunal extent that it confirms the demand of differential tax liability on services rendered on commission received for canvassing advertisements will not be sustainable since the said service will not be taxable under "Advertising Agency Service" and therefore since that has not been demanded under BAS, the entire proceedings to that extent will not sustain and therefore is set aside.

6. However, at this juncture, Ld. A.R draws our attention to the demand of interest of Rs.5821/- under Section 75 ibid on the amount of service tax paid belatedly by the appellant, which according to him, is sustainable.

7. In response, Ld. Advocate submits that this interest amount of Rs.5821/- pertains to belated payment of commission which they were already paying under Advertising Agency Services for the period April 2005 to December 2006. She submits that appellant is not contesting this interest liability.

8. We do not intend to interfere with the demand of interest of Rs.5821/-. Appeal is allowed on the above terms.

(dictated and pronounced in court)

(Madhu Mohan Damodhar)
Member (Technical)

(Sulekha Beevi C.S)
Member (Judicial)

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Customs, Excise & Service Tax Appellate Tribunal

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अपील अधिकारी / (CESTAT)
चेन्नै / CHENNAI