

**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHENNAI**

REGIONAL BENCH – COURT No. III

Service Tax Appeal No. 40707 of 2013

(Arising out of Order-in-Original MAD-ST-000-COM-53/2012 dated 31.12.2012 passed by Commissioner of Central Excise, Central Revenue Buildings, No. 4, Lal Bahadur Shastri Road, Bibikulam, Madurai – 625 002)

**M/s. AD-inn Innovative
Advertisers (Mr. P. Ramesh)**

No. 1/1, 1st Cross Street,
Vanamamalai Nagai,
Bye-Pass Road,
Madurai – 625 010.

...Appellant

Versus

Commissioner of Central Excise

Madurai Commissionerate,
Central Revenue Building,
No. 4, Lal Bahadur Shastri Road,
Bibikulam,
Madurai – 625 002.

...Respondent

With

Service Tax Appeal No. 40404 of 2015

(Arising out of Order-in-Original MAD-CEX-000-COM-05/2014 dated 28.11.2014 passed by Commissioner of Central Excise, Central Revenue Buildings, No. 4, Lal Bahadur Shastri Road, Bibikulam, Madurai – 625 002)

M/s. Ad-inn Advertising Services (P) Ltd.,

No. 29, 1st Cross Street,
Vanamamalai Nagai,
Bye-Pass Road,
Madurai – 625 010.

...Appellant

Versus

Commissioner of Central Excise

Madurai Commissionerate,
Central Revenue Building,
No. 4, Lal Bahadur Shastri Road,
Bibikulam,
Madurai – 625 002.

...Respondent

And

Service Tax Appeal No. 40575 of 2015

(Arising out of Order-in-Original MAD-CEX-000-COM-12/2014 dated 08.12.2014 passed by Commissioner of Central Excise, Central Revenue Buildings, No. 4, Lal Bahadur Shastri Road, Bibikulam, Madurai – 625 002)

M/s. Ad-inn Advertising Services (P) Ltd.,
No. 29, 1st Cross Street,
Vanamamalai Nagai,
Bye-Pass Road,
Madurai – 625 010.

...Appellant

Versus

Commissioner of Central Excise
Madurai Commissionerate,
Central Revenue Building,
No. 4, Lal Bahadur Shastri Road,
Bibikulam,
Madurai – 625 002.

...Respondent

APPEARANCE:

For the Appellants : Shri S. Murugappan, Advocate

For the Respondent : Shri N. Satyanarayanan, Assistant Commissioner / A.R.

CORAM:

HON'BLE MS. SULEKHA BEEVI C.S., MEMBER (JUDICIAL)
HON'BLE MR. VASA SESHAGIRI RAO, MEMBER (TECHNICAL)

DATE OF HEARING : 18.10.2023

DATE OF DECISION : 05.01.2024

FINAL ORDER Nos. 40021-40023 / 2024

Order :- [Per Mr. VASA SESHAGIRI RAO]

Service Tax Appeal Nos. ST/40707/2013, ST/40404/2015 and ST/40575/2015 have been filed by Mr. P. Ramesh, Proprietor, M/s. Ad-Inn Advertising Services assailing the Orders-in-Original No. 53/2012 dated 31.12.2012, No. 05/2014 dated 28.11.2014 and No. 12/2014 dated 08.12.2014 passed by the Commissioner of Central Excise, Salem Commissionerate confirming demands of Service Tax of Rs.99,64,532/-, Rs.2,47,58,873/- and Rs.1,97,32,946/- under the Category of "Advertising Service" for the periods 01.07.2006 to 31.07.2008, 01.04.2007 to

31.03.2011 and 01.04.2011 to 31.03.2012 respectively and confirming recovery of CENVAT credit erroneously taken to the tune of Rs.2,34,067/-, Rs.6,81,675/- and Rs.6,64,138/- during the said periods, under proviso to Section 73(1) of the Finance Act, 1994 by invoking the extended period and also levy of interest under Section 75 and imposition of penalties under Sections 77(e) and 78 of the Finance Act, 1994.

2.1 Brief facts of the present appeals are that Ad-Inn Advertising, a Private Limited Company w.e.f. 23.01.2007 was engaged in rendering taxable services under the category of Advertising Agency service to various clients. Earlier to till 23.01.2007, Ad-Inn Innovative Advertisers was doing into business activities as a proprietary concern and Mr. P. Ramesh was its proprietor. Same operation was continued except for change in the constitution.

2.2 The appellants are undertaking basically, the following advertising services:-

- i. Taxable services such as conducting events, road shows, promotional activities, designing and erection of hoarding, etc.,
- ii. Exempted services, wall painting, etc.,
- iii. sales related activity, i.e., printing of wall posters, bills, banners, making glow boards etc.,
- iv. Releasing of advertisement in News Paper/TV/Radio channels on commission basis.

2.3 The Department was of the view that the Appellant had paid Service Tax on some transactions and in most of the transactions, they had paid VAT even though the job involved was similar in nature involving arrangements for installing the advertisement arches, signage boards, etc. at various places part from preparing them and the services rendered thereon appeared to fall under the category of "Advertising Agency" in terms of Section 65(3) of the Finance Act, 1994. The department entertained the view that the nature of transactions provided by them was inseparable involving both preparation of advertisement material and its display and in as much as they did not raise separate invoices for the sale of goods and for providing service, it appeared that no sale is involved in such transactions and hence they are not eligible to avail the benefit of Notification No. 12/2003-ST. In respect of transactions which were considered by the Appellant as 'Sale of Goods' (for which only VAT was paid), the Appellant had undertaken entire work including purchase of materials, preparation and installation, etc. As per Section 65(2) of the Finance Act, the term advertisement includes any notice, circular, label, wrapper, document, hoarding or any other audio or visual representation made by light, sound smoke or gas. The Department was of the view that scope of above definition of taxable service is also wide enough to cover 'any service' rendered in any manner in relation to advertisement and therefore it appeared that products of Ad-inn are advertisement as defined under Section 65(2) of the Finance Act and they were liable to pay Service tax on the taxable value under the category of Advertising Agency service.

3. On scrutiny of records, it was noticed that during the period from 01.04.2006 to 31.03.2008, the Appellant had rendered taxable services valued at Rs.12,66,78,223/- out of which they had declared and paid Service Tax on the taxable value of Rs.3,34,09,844/- only and differential taxable value of Rs.9,32,68,379/- had not been declared in the ST-3 returns and had escaped Service Tax assessment. Service Tax on the value of Rs.9,32,68,379/- worked out to Rs.1,14,35,610/- which was liable to be recovered under proviso to Section 73(1) of the Finance Act in as much as there was suppression of facts with an intention to evade payment of appropriate service tax.

4. Further, it appeared that the Appellant had taken CENVAT credit of Rs.2,34,067/- during the period 2006-07 and 2007-08 based on invoices raised by various broadcasters which were in relation to broadcasting of advertisement for their clients. The department was of the view that such services do not qualify as input services for the Appellant and therefore the CENVAT credit availed was inadmissible under the provisions of CENVAT Credit Rules, 2004(CCR). Therefore, it appeared that the CENVAT credit availed erroneously was liable to be recovered under Rule 14 of CCR read with Section 73(1) of the Finance Act.

5.1 A Show Cause Notice No. 03/2011 dated 03.11.2011 was issued to the Appellant by the Commissioner of Central Excise and Service Tax, Madurai proposing (i) to demand the Service Tax of Rs.1,14,35,610/- on Advertising Agency Service for the period from 01.04.2006 to 31.03.2008 besides proposing

to levy interest under Section 75 and to propose penalties under Sections 76,77 and 78 of Finance Act, 1994. and (ii) to recover the CENVAT Credit of Rs.2,34,067/- erroneously availed under Rule 14 of CCR, invoking Section 73(1) of the Finance Act, besides proposing to levy interest under Section 75 and to propose penalties under Sections 76, 77 and 78 of Finance Act, 1994 read with Rule 15 of CCR. Subsequently, the following two other Show Cause Notices were issued on the Appellant:

- (i) Show Cause Notice dated 11.10.2012 was issued to the Appellant proposing to demand Service Tax of Rs.2,47,58,873/- on Advertising Agency Service for the period from 01.04.2007 to 31.03.2011 invoking Section 73(1) of the Finance Act, 1994 besides proposing to levy interest under Section 75 and to propose penalties under Sections 76, 77 and 78 of Finance Act, 1994. Further, an amount of Rs.6,81,675/- erroneously availed as CENVAT Credit was sought to be recovered under Rule 14 of CCR, invoking Section 73(1) of the Finance Act, besides proposing to levy interest under Section 75 and to propose penalties under Sections 76,77 and 78 of Finance Act, 1994 read with Rule 15 of CCR.
- (ii) Show Cause Notice dated 12.07.2013 was issued to the Appellant proposing to demand Service Tax of Rs.1,97,32,946/- on Advertising Agency Service for the period from 01.04.2011 to 31.03.2012 invoking Section 73(1) of the Finance Act, 1994 besides proposing to levy interest under Section 75 and to propose penalties under Sections 76, 77 and 78 of Finance Act, 1994. Further, it was proposed to recover CENVAT

credit of Rs.6,64,138/- erroneously availed, invoking Section 73(1) of the Finance Act, besides proposing to levy interest under Section 75 and to propose penalties under Sections 76, 77 and 78 of Finance Act, 1994 read with Rule 15 of CCR.

5.2 After due process of law, the Adjudicating Authority vide Order-in Original No.53/2012 dated 31.12.2012, confirmed demand of Rs.99,64,532/- and Rs.2,34,067/- in Show Cause Notice dated 03.11.2011 and imposed equal penalty under Section 78 of the Act read with Rule 15(3) of CCR besides imposing penalties under Section 77 and levying interest under Section 75 of the Finance Act, 1994. Aggrieved, the appellant is on appeal before this forum in ST/40707/2013.

5.3 Similarly the demands in Show Cause Notices dated 11.10.2012 and 12.07.2013 were fully confirmed by the lower authority as proposed in the said Notices and Penalty imposed Under Section 78 read with Rule 15 of CCR and besides imposing penalties under Section 77 and levying interest under Section 75 of the Finance Act, 1994. Aggrieved by the above Orders, the appellant is on appeal before this forum in appeals ST/40404/2015 and ST/40575/2015.

6.1 Ld. Advocate Shri S. Murugappan representing the Appellant submitted that prior to Show Cause Notice No. 3/2011 dated 03.11.2011, a demand notice was issued for the period from 2002-2006 invoking extended period and since the facts were known to the Department, the other three notices

alleging suppression are not sustainable since the department was already aware of the issue in view of the following Supreme Court judgements:

- (i) *Nizam Sugar Factory Vs. Collector of central Excise, AP* reported in [2008 (9) STR 314 (SC)]
- (ii) *ECE Industries Limited Vs. Commissioner of Central Excise, New Delhi* reported in [2004 (164) ELT 236 (SC)].

6.2 It was averred that all facts of rendering of services either taxable or non-taxable was intimated to the department by way of filing of periodical ST-3 returns and therefore the notices were hit by limitation as there was no suppression involved. The notices were issued based on financial data available in the Balance Sheet which were available to the Department. There was no suppression of fact by way of fraud, collusion, wilful mis-statement with intent to evade payment of Service Tax as all facts were declared to the Department. In the above circumstances, allegation of suppression with intent to evade payment of Service Tax was totally unwarranted. To allege suppression of facts, there should be *mens rea* to evade payment of tax which was not established and hence suppression could not be alleged. The following case laws were cited in reliance of the above submission:-

- (i) *S.K. Sacks (p) Ltd. Vs. Commissioner of Central Excise* [2012 (276) ELT 186 (P & H)]
- (ii) *Commissioner of Central Excise Vs. ESS ESS Engineers* [2011 (23) STR 3 (P&H)]
- (iii) *Commissioner of C.Ex, Chandigarh Vs. Pepsi Foods Ltd.* [2010 (260) ELT 481 (SC)]

(iv) Bellary Steels & Alloys Limited Vs. Commissioner of C.Ex, Belgaum [2006 (199) ELT 808 (Tri.-Bang.)]

(v) Lanco Industries Ltd. Vs. Commissioner of C.Ex, Tirupathi [2012 (25) STR 206 (Tri.-Bang.)]

6.3 It was contended that the impugned notice/order were issued/ passed based on a suspicion that entire activities or business carried out by the Appellant were taxable services only, without conducting any detailed investigation and hence notice/order are invalid.

6.4 It was submitted that the entire figures in the Profit and Loss Account could not be taken as a taxable income through advertisement service, without carrying out any investigation and without causing any verification of the documents. The Appellant produced a lot of evidence which was not admitted by the lower authority.

6.5 It was submitted that every service rendered is not subject to levy of Service Tax and only taxable service is subject to levy of Service Tax. In this regard the Ld. Counsel would take us through the decision in the case of Zodiac Advertisers Vs. Commissioner of Central Excise in which the Hon'ble Tribunal, Bangalore held that in the absence of any creativity relating to preparation, making and display undertaken by the Appellants, mere manufacture of products as per instructions of the service receiver would not bring them under the definition of 'Advertising Agency'. It was held

by the Hon'ble Tribunal that mere manufacturing the product as per instructions and specifications of the job work would not amount to rendering the service which can fall in the category of 'Advertising Agency'. Applying the analogy of the decision taken in this case, when the matters are just printed without the activities relating to making or preparation of an advertisement like designing, visualising, conceptualising, etc. there is no liability to pay service tax on the charges made thereon. Though the Hon'ble High Court of Kerala reversed the decision of the Hon'ble CESTAT, the Hon'ble Supreme Court remanded the matter for de-novo proceedings to decide whether there was any conceptualisation. The Hon'ble Supreme Court, in the above case, reported in [2009 (14) STR 449 (SC)] held as follows:-

"2. Having heard learned counsel on both sides, we are of the view that an important question of law does arise in this case, namely, whether an assessee comes within the definition of the word 'advertising agency' as defined in Section 65(3) of the Finance Act, 1994 as amended.

3. However, on perusing the record, we find that material documents, particularly, orders and purchase materials, books of accounts etc., were not placed before the Tribunal/Adjudicating Authority despite being called upon to do so. There is a specific finding to that effect in the High Court's Order impugned herein.

4. In the circumstances, we set aside the order of the High Court as well as that of the Tribunal, giving final opportunity to the appellant herein to produce all the relevant records particularly to show the nature of the work which the appellant specifically undertakes. Accordingly, the matter stands remitted to the Tribunal which would examine whether the appellant herein is undertaking the work of conceptualising, visualising and creating the advertisement or whether it is only complying with the instructions of its clients. This aspect needs further details. Therefore, we are setting aside the order of the Tribunal as well as the order of the High Court."

6.6 The Ld. counsel has submitted that, as they were printing the matters supplied by the clients, they were not liable to pay service tax on the activities relating to printing of materials either on paper or cloth or flex. Printing of flex is also not liable to be taxed as no creativity was involved therein and the advertisement materials in the flex were not conceptualised or designed by the Appellant but are just printing the matter. Likewise no service tax is chargeable on printing of cloth. However, the lower authority without going into the merits of the issue and without analysing the facts put forth by the Appellant had just confirmed the demands.

6.7 Ld. Counsel also submitted that the Appellant prepares banners either on cloth or flex and the matter for the banners will be supplied by their clients and they have designed the banners or matters. The Appellant also supplies caps, banners to clients which were bought out and supplied and is a sale of material for which appropriate sales tax was discharged.

6.8 It was further submitted that for the same activity sales tax/ service tax was not leviable. That except for the matters which involve service tax, they have paid sales tax as follows (in respect of SCN No. 3/2011):

	Value	Rate of Tax	Tax Paid
Re-sale tax	3,60,06,800	1%	360068
Sales Tax	15,88,770	10%	158877
Sales Tax	10,05,470	12%	120654
Sales Tax	47,58,833	3%	142765

Sales Tax	1,72,875	4%	6915
Total	4,35,32,728/-		7,89,279/-

In this regard, the decision of the Hon'ble Supreme Court in the case of *Image Creative Pvt. Ltd. Vs. Commissioner of Service Tax [2008(9) STR 337(SC)]* was cited, wherein it was held that payments of service tax and VAT are mutually exclusive. It was submitted that in numerous cases, it was decided by various forums that when sales tax was paid no service tax liability arises.

6.9 The Ld. counsel has also argued that the Appellant while collecting advertisements for display in newspapers, charge their clients/ customers for the whole amount and remit the same to newspapers after retaining some amount towards commission on which Service Tax was paid and duly declared in the ST-3 returns filed by them and in this connection relied on the judgements in *Adwise Advertising Pvt. Ltd. [1998 (97) ELT (35) (Mad.)]* and *Spring Advertising Pvt. Ltd. [2014 (36) STR 883 (Tri.-Mum.)]* This activity of the Appellant was purely as a pure agent. Without considering that the Appellant had rightly discharged Service Tax liability, the lower authority has held that there was no mention about any such commission in the invoices. Further, the advertisement in print media is exempted and not taxable.

6.10 It was submitted that wall painting of advertisements at the behest of customers was not taxable as no creativity is involved therein in the light of the decision in the case of *Dhanushree Publicity Vs.*

Commissioner of Central Excise, Jaipur-I [2008 (10) STR 209 (Tri.-Del.)] by the Principle bench of Hon'ble CESTAT. However, the impugned order has erroneously held that the above case pertains to taxability of painting done on walls by an individual painter who was given photos by clients whereas in the case of Ad-inn, they were an advertising agency who procures orders from clients, makes design and preparation, engages artists and hands over design, size along with materials for drawing as an advertisement and collects amounts for the entire work and hence their activity is not confined to wall painting but extends to the activity of advertisement.

6.11 The Ld. counsel submitted a worksheet to reconcile the differential value arrived at in the impugned order in order to establish that the Appellant has not evaded any Service Tax, which has been extracted below:-

Year	2006-07	2007-08
Amount as per Profit and Loss Account	98477310	40839396
Taxable Value		
Advertising on Paper	18497927	6064776
Advertising non-paper	18654956	10892041
Exempted(Wall painting)	13553543	0
Sales	43532728	23792585
Total	94239154	40849402

From the above, it can be inferred that during the year 2006-07, the total value of the Appellants business was

Rs.9,84,77,310/- and of which the sale value was Rs.4,35,32,728/- and exempted service value was Rs.1,35,53,343/- representing the charges received for wall painting. The value of advertisements made through paper was Rs.1,84,97,927/- on which a commission of 15% was earned for which the Appellant was liable to pay service tax as per which they have filed ST 3 returns. The same scenario applies for the year 2007-08 which was self-explanatory as per above worksheet. As they have already declared the same, suppression could not be invoked. Based on the activities carried out, they have discharged sales tax in some transactions while remitting service tax on other transactions.

6.12 The Ld. Counsel further submitted that as per CENVAT Credit Rules, 2004 as amended, every service provider is eligible to avail credit of service tax paid on input services. The services rendered by the Appellant pertained to Advertisement Services and the input services were telephone services, maintenance, management and repair services, Broadcasting Service, Courier Service, Insurance service, etc. Of the activities, it was alleged in the impugned order that the Appellants were acting as pure agents and hence not eligible to avail the credit of Service Tax paid to the channel operators and FM operators. The Appellants were advertising agencies and they avail the services of broadcasting agencies and hence the services of broadcasting were an input service. At no point of time they acted as pure agent for clients as the prevailing relationship between them was service provider-client relationship. There was no restriction in the CENVAT Credit Rules that the input and output service could fall under one and the same category. Nowhere in the Rules,

it was prescribed that further work should be done to qualify a service as an input service. At no point of time, the appellants were acting as intermediaries and hence the Appellants were rightly eligible to avail credit of Service tax paid by them on input services. The Appellant, in the case of advertisement through FM/Visual media, at the behest of their clients were availing the services of FM and TV channels including satellite channels and charged service tax along with charges for broadcasting the advertisement. As it was a part of their advertisement work, it was an input service. The only condition for availing credit on inputs / input services is that the said services should be used directly or indirectly in providing the output service and in their case, the Appellant have directly utilised the services of broadcasting agencies and other advertising agencies to provide the output services and hence they are eligible to avail the service tax paid on the said service providers. In many cases, it was decided by various forums like CESTAT and High Court and Supreme court that when Service Tax was paid, the service providers during the course of executing a work or service are entitled to avail the credit of the service tax paid.

6.13 The Ld. Counsel placed reliance on the further following judicial pronouncements: -

- (i) *ECE Industries Limited Vs. Commissioner of Central Excise, New Delhi* [2004 (164) ELT 236 (SC)]
- (ii) *Synergy Audio Visual Workshop Pvt. Ltd. Vs. Commissioner of Service Tax, Bangalore* [2008 (10) STR 578 (Tri.-Bang.)]
- (iii) *Hi-tech Publicities Vs. Commissioner of central Excise, Madurai* [2018 (9) GSTL 119 (Tri.-Chennai)]

- (iv) *Ajanta Fabrication Vs. Commissioner of C.Ex, Meerut [2006 (4) STR 605 (Tri.- Del.)]*
- (v) *Maket Chase Advertising Vs. Commissioner of C.Ex, Madurai [2008 (10) STR 598 (Tri.- Chennai)]*
- (vi) *Star Neon Signs Vs. Commissioner of Central Excise, Chandigarh [2006 (2) STR 588(Tri.- Del)]*
- (vii) *William LEA (India) Pvt. Ltd. Vs. Commissioner of central Excise, Chennai-IV [2019 (25) GSTL 433 (Tri.-Chennai)]*
- (viii) *Mega Trends Advertising Ltd. Vs. Commissioner of C.ex & ST, Lucknow [2020 (38) GSTL 57 (Tri.-All.)]*
- (ix) *Adbur Pvt. Ltd. Vs. Commissioner of Service Tax, Delhi [2017 (5) GSTL 334 (Tri.-Del.)]*
- (x) *Shalimar Paints Limited Vs. Commissioner of central Excise, Kolkata-II [2017 (3) GSTL 270 (Tri.-Kol.)]*

7. The Ld. Authorised representative Shri N. Satyanarayanan representing the Department reiterated the findings of the lower Adjudicating Authority.

8. Heard both sides and carefully considered the submissions and evidences on record.

9. The following issues arise for decision in this appeal:

- i. whether the services rendered by Ad-inn in those transactions where they had not paid service tax but had paid only VAT and where they paid neither service tax nor VAT, are taxable under the

category of 'Advertising Agency' as defined under Section 65(3) of the Act;

- ii. whether credit of service tax taken by Ad-inn in respect of broadcasting of advertisement which are not their input services, is admissible under CCR, and
- iii. whether the demand is time barred and extended period of limitation can be invoked in this case for the reason that demand of tax for a part period from 04/2006 to 06/2006 was already covered in the Show Cause Notice issued earlier.

10.1 We find from appeal records that the Appellant was registered with the department for Advertising Agency service and were paying service tax on conducting events, road shows, promotional activities and hoardings and also on commission earned on advertisements in newspapers, TV, FM and were also filing ST-3 returns periodically, declaring therein the total Revenue earned during the period, exempt and taxable services, Service Tax paid on taxable services.

10.2 In order to discuss the issues involved in these appeals, it is expedient to reproduce the definitions of "Advertisement", "Advertising Agency" and "Taxable Service" as defined in the Finance Act, 1994.

- (i) As per Section 65(2) of the Finance Act, the term "Advertisement" includes any notice, circular, label, wrapper, document, hoarding or any other audio or visual representation made by light, sound smoke or gas.

(ii) "Advertisement Agency" means any person engaged in providing any service connected with the making, preparation, display or exhibition of advertisement and includes an advertising consultant;

(iii) "Taxable Service" means any service provided or to be provided to any person by any advertising agency in relation to advertisement in any manner.

(iv) Section 67 stipulates the method for arriving at the value of taxable service. As regards advertising agency, Section 67(d) is relevant and it reads as follows:-

"In relation to service provided by an advertising agency to a client, shall be the gross amount charged by such agency from the client for services in relation to advertisements."

10.3 We find from case records that the Appellants:-

(i) has not discharged service tax but paid sales tax in respect of printing of cloth and flex banners, leaflets, brochures, stickers, tin sheets, tags, posters, invitations, coupons, signage, backlit, frontlit, nonlit, arch, foam sheet, hand bills.

(ii) has not paid either sales tax or service tax in respect of banners, cloth board and wall painting undertaken.

(iii) Service Tax was being paid on the amount of commission earned in respect of space booking in newspaper advertisements and release of advertisements in TV and FM Radio.

(iv) and they are paying service tax only in respect of TV, Radio, Advertisement, Promotionals, human

branding, outdoor options, hoarding rent, roadshows, etc.

10.4 In respect of 10.3 (iii) above, the lower authority has held that the Appellant is liable to pay service tax on the gross value indicated in the invoice since commission has not been separately indicated in the invoices raised by the Appellant on advertisements in print media.

10.5 We find that the levy of service tax on advertising services came into force on 01.11.1996. We find it relevant to refer to CBEC Instructions issued *vide* F.No. 341/43/96-TRU dated 31.10.1996 to clarify as to how the same has to be computed as follows:-

*"It is further to be clarified that in relation to advertising agency, the service tax is to be computed on the gross amount charged by the advertising agency from the client for services in relation to advertisements. This would, no doubt, include the gross amount charged by the agency from the client for making or preparing the advertisement material, irrespective of the fact that the advertising agency directly undertakes the making or preparation of such advertisement or gets it done through another person. **However, the amount paid, excluding their own commission, by the advertising agency for space and time in getting the advertisement published in the print media (i.e. newspapers, periodicals, etc.) or the electronic media (Doordarshan, private T.V. channels, AIR etc.) will not be includible in the value of taxable service for the purpose of levy of service tax.** The Commission received by the advertising agency would, however, be includible in the value of taxable service."*

We find that the assessee is indicating a value in the invoices which is inclusive of the Commission received on which service tax is duly paid. From the clarifications issued in the above circular, it is amply clear that the Appellant in this case is required to pay service tax on

the commission received from the print media for publishing of advertisements and also for release of advertisements in TV and FM Radio.

10.6 The above Circular was disputed in writ petition regarding the taxability of the value of commission earned as per the clarification in the circular as the instructions in the circular run contrary to the statutory provisions of Section 67(d) of the Finance Act. With reference to the above instructions of the CBEC, we find it relevant here to discuss the observations of the Hon'ble High Court in *Adwise Advertising Pvt. Ltd. Vs. Union of India* reported in [1998 (97) E.L.T. 35 (Mad.)], as given below:-

"15. *I do not think the said submission is correct even though at the initial stage, I was also of the same view. But, ongoing deeper into the Section, and, taking into consideration the practice of the Advertising Agency, I feel that the impugned instruction is only in the nature of a clarification, and it does not go against the intention of the Legislature. The reasons are given below.*

16. *I have already extracted Section 67(d) of the Act which says that,*

"For the purposes of this Chapter, the value of taxable services, —

(a) to (c)

(d) in relation to service, provided by an advertising agency to a client shall be the gross amount charged by such agency from the client for services in relation to advertisements." [Emphasis supplied]

The gross amount received from the client includes 15% is not disputed. Learned Counsel only submitted that this 15% is the commission which the Agency receives from the publishers. While considering the service tax, the Authorities have only to consider what is the actual amount received by the Agency from the client, and how the Agency appropriates is not their concern. That is a matter between the publisher and the agent. The taxing Authorities are not concerned with the arrangement between the publisher and agency. It is not disputed that

if there is no advertising agent, and the client directly deals with the publisher, there will be no deduction in the gross amount that is payable by the client. When the advertising agent receives the gross amount, he receives it as the agent of the publisher. The consideration for that service by the agent with his client is the gross amount actually received. Merely because the publisher permits the agent to retain a portion of that amount, it cannot be said that it is not in respect of the services in relation to the advertisement.

17. *The said argument is strengthened in view of the definition of 'taxable service' as defined under Section 65(16) of the Act. As per the said Section, 'taxable service' so far as advertising agency is concerned, is stated as 'any service provided to a client, by an advertising agency in relation to advertisements in any manner' [Emphasis supplied]. This also strengthens the argument put forward by respondent."*

10.7 In writ appeal on the same issue, a 2 member bench of the Hon'ble High Court Chennai dismissed the Writ Appeal and confirmed the above judgement which has been reported in [2001 (131) E.L.T. 529 (Mad.)]. The relevant portion of order of the bench has been reproduced below:-

"11. *There can be no dispute that there is such a specific language but, we cannot ignore firstly the total difference in the taxable service as provided by Section 67(a), (h) and (k) on one hand and Sec. 67(d) on the other. The very nature of those services is different and again, where the language of Sec. 67(d) of the Act, itself is clear and beyond any ambiguity so as to include any kind of commission earned by the advertising agency as a part of the gross amount charged by that agency from its clients then, there would be no question of our looking to the other provisions of the same Act for interpretation. We do not think that it would be necessary for us to fall back upon some other provisions of the Act, though of the same Act, where the interpretation of Sec. 67(d) is absolutely clear and unambiguous. If the concerned circular had repeated something which was axiomatic, it cannot be said that the said Circular has travelled beyond the scope of Sec. 67(d) of the Act.*

12. *The learned Additional Solicitor General, Mr. V.T. Gopalan, Vociferously supported the circular and contended that there is nothing in the Circular which*

overrides the Act. He also pointed out that there was nothing binding about this circular and it can never be held to be binding on the Courts or authorities. The learned Counsel pointed out that unless such a specific case was brought in, it was futile to consider the scope of this circular. According to him, the writ petition itself was premature. The learned Counsel further argued that the very language of Sec. 67(d) of the Act was extremely to admit of any doubt. Besides this, the learned Counsel also took us to the definition of "advertising agency" and pointed out that a commercial concern which provided any service connected with the making, preparation, display or exhibition of advertisements would be held to be the advertising agency. The learned Counsel, therefore, argues and in our opinion rightly that selecting or locating a particular print media or electronic media for display or exhibition of advertisements would be a part of service provided by the advertising agency and if it gets paid for that purpose by way of a commission, it would be added to the value of the taxable service. The learned Counsel pointed out that similar is the language of Sec. 65(48). In view of our discussion, we would choose to agree with the learned single Judge, who has accepted the contentions on behalf of the state.

13. *The learned senior Counsel for the appellant then relied on the law laid down by the Apex Court in *Adwise Advertising v. Union of India and Others* - (AIR 1994 SC 2416). The judgment is stated only for the purpose of canvassing that circulars of the Central Board of Direct Taxes cannot detract from or override the provisions of the Act. We have absolutely no difficulty on this proposition, but, we have to point out that even if this can be said to be a circular under the Act, it does not have the effect of overriding or detracting from any of the provisions of the Act. The judgment is, therefore, of no use to the learned Counsel"*

The above judgement was again reiterated by the Hon'ble Madras High Court in [2006 (2) STR 239 (Mad.)].

10.8 Following the CBEC instructions and the judicial precedents above, we are of the considered opinion that the Commission earned by the Appellant is taxable only to the extent charged and included in the gross value and not the entire gross amount indicated in the invoice.

11.1 We find that the lower authority in the impugned order has held in Para 13.1 that there is no difference between the description of the service for which service tax was paid and for which sales tax only paid and method of invoicing is confusing. Exact nature of service rendered has not been furnished either in those invoices or in copies of purchase orders produced by them. It was held that in respect of Hoardings, the Appellant has been found to pay service tax and VAT and in respect of cloth banners only VAT has been paid and in respect of invitations neither VAT/ Service tax has been paid and in respect of wall paintings no service tax has been paid. It was also observed that the exact nature of the service has not been indicated in the invoice and in Para 15, it is held that the value of goods and material have not been separately indicated in the invoice as the Appellant renders a composite service and since value of goods sold have not been separately billed, the Appellant does not qualify to avail the exemption under Notification No. 12/2003-ST dated 20.06.2003.

11.2 In this regard, the invoice No. I-417 dated 02.06.2006 issued to M/s. Getit Infomediary Ltd. was examined and it is noticed that the Appellant has paid Service Tax on that portion of the bill relating to Hoarding /tie up charges which has been specified

clearly and in respect of Flex Printing of the Hoarding, only VAT has been paid. Regarding issue at 9(i) above, we find that there are a catena of judgements wherein it was held that if VAT has been paid on the value indicated in the invoice, it tantamounts to sale on which no service tax is leviable. In the case of *Image Creative Pvt. Ltd. Vs. Commissioner of Service Tax [2008 (9) STR 337 (SC)]* it was held as follows:-

"28. *Payments of service tax as also the VAT are mutually exclusive. Therefore, they should be held to be applicable having regard to the respective parameters of service tax and the sales tax as envisaged in a composite contract as contradistinguished from an indivisible contract. It may consist of different elements providing for attracting different nature of levy. It is, therefore, difficult to hold that in a case of this nature, sales tax would be payable on the value of the entire contract; irrespective of the element of service provided. The approach of the assessing authority, to us, thus, appears to be correct.*

34. *We may notice that the concept of aspects theory which had found echoes in State of U.P. Another v. Union of India & Anr. [(2003) 3 SCC 239] has expressly been overruled by a Three Judge Bench in Bharat Sanchar Nigam Ltd. (supra) stating :*

"78. But if there are no deliverable goods in existence as in this case, there is no transfer of user at all. Providing access or telephone connection does not put the subscriber in possession of the electromagnetic waves any more than a toll collector puts a road or bridge into the possession of the toll payer by lifting a toll gate. Of course the toll payer will use the road or bridge in one sense. But the distinction with a sale of goods is that the user would be of the thing or goods delivered. The delivery may not be simultaneous with the transfer of the right to use. But the goods must be in existence and deliverable when the right is sought to be transferred.

79. Therefore whether goods are incorporeal or corporeal, tangible or intangible, they must be deliverable. To the extent that the decision in State of U.P. v. Union of India held otherwise, it was, in our humble opinion erroneous."

35. *For the reasons aforementioned, the impugned judgment cannot be sustained. It is set aside accordingly. The Appeal is allowed. No costs."*

Since the Appellant has discharged VAT and Service Tax on the relevant portions of Sale or Service, as the case may be, demand of Service Tax in respect of sale transactions is not legal and so cannot be sustained.

11.3.1 In the case of *Zodiac Advertisers Vs. Commissioner of Central Excise* reported in [2006 (3) STR 538 (Tri.-Bang.)] the Hon'ble Tribunal, Bangalore held that in the absence of any creativity relating to preparation, making and display undertaken by the Appellants, mere manufacture of products as per instructions of the service receiver would not bring them under the definition of 'Advertising Agency'. It was held by the Hon'ble Tribunal that mere manufacturing the product as per instructions and specifications of the job work would not amount to rendering the service which can fall in the category of 'Advertising Agency'. The relevant portion of the judgement has been reproduced below:

"6. We have gone through the records of the case carefully. Advertisement, according to the understanding of laymen, is promotion of goods, services, companies and ideas. Modern advertisement is carried out in various ways and it is a very highly professionalised area. When a company wants to promote its product, normally, the work is entrusted to an advertisement agency. Advertisement is a highly creative work. Quite a bit of cerebral input is needed. There is conceptualisation, visualisation, designing, etc. While advertising, the intention is to influence the mind of the people who watch the advertisement. There are various ways of advertisement. Advertisement is done through books and magazines. There are ubiquitous advertisement hoardings in all the modern cities. Advertisement is done through radio and TV channels. Now let us turn to the definition of 'advertising agency' as per the Finance Act, 1994 :

"Advertising agency" means any commercial concern engaged in providing any service connected with the making, preparation, display or exhibition of advertisement and includes an advertising consultant."

As can be seen from the above definition, the ingredients of the service of advertising agency consists of the following :-

(a) Making; (b) Preparation; and (c) Display or exhibition of advertisement.

There are various steps involved in the completion of an advertisement. The making and preparation of the advertisement is the most important and difficult part as it involves conceptualisation, visualisation and designing. The printed material is only a product. To produce the product, several input services are required and these services are rendered by Advertisement Agencies. In the present case, the appellants merely undertake the screen printing of the advertisement hoarding. In other words, they are not part of any creative activity. The actual advertisement agencies develop the concept for the advertisement and provide service to the concerns for developing the designs for the purpose of advertising their products. It can also be appreciated that in any advertisement, various agencies may be involved. The appellant is getting the work order for making items such as vinyl stickers, corrugated light boxes, PVC balloons, vehicle tyre stepney covers along with the art work given. The appellant merely manufactures the products as per the instructions and specifications of the job undertaken. Moreover, the appellant is not carrying out any exhibition of advertisement. It is seen that the appellants who merely manufacture screen printed products as per the directions of the advertiser, cannot be called as an Advertisement agency in the absence of any creative activity and services relating to preparation, making and display of advertisement on his part. To be called as an 'advertising agency', all the activities mentioned in the definition should be carried out by the person. We can provide one analogy. There is always a difference between a fashion designer and a tailor. A fashion designer may not do the actual stitching. He or she may provide all creative input in designing garments. A tailor simply executes the design. In our view, there is no evidence to show that the appellant is undertaking any advertising agency work in accordance with the definition given in the Finance Act, 1994. The Board's clarification mentioned in the Trade Notice is also squarely applicable. Hence, we allow the appeal with consequential relief, by setting aside the impugned order."

Though the Hon'ble High Court of Kerala reversed the decision of the Hon'ble CESTAT, the Hon'ble Supreme Court remanded the matter for de-novo proceedings to decide whether there was any conceptualisation, visualisation and designing.

11.3.2 Further, we find that in *Hi-Tech Publicities Vs. Commissioner of Central Excise, Madurai* reported in [2018 (9) GSTL 119 (Tri.-Chennai)], it was held that:-

"7. Thus, the argument of the appellant that they simply fabricate signboards such as glow signboards, front lit boards, etc., on printed flex boards supplied by Pepsico containing the advertisement material and in the case of Indian Oil Corporation, they simply do the restickering of vinyl stickers, etc., finds support from the purchase orders. The appellants have also relied upon the Trade Notice dated 16-9-1999. In regard to activity of printing and publishing telephone directories, the Board had clarified that if no activity relating to making or preparation of an advertisement is involved, the activity would not be liable to service tax under the category of 'Advertisement Agency Service'. Such a view was taken in the case of *Ajanta Fabrication* (supra) as well as *Star Neon Singh* (supra). The Tribunal had taken the same view in the case of *Zodiac Advertisers* (supra) which has now been remanded to the Tribunal by the Hon'ble Supreme Court, pursuant to the reversal of the judgment by the Hon'ble Kerala High Court. In such circumstances of the case, on facts, we have to say that there is no evidence before us to establish that the appellants are involved in any making or preparation of an advertisement such as designing, visualizing, conceptualizing, etc., to fall under the definition of 'Advertisement Agency Service'. The demand therefore raised alleging that appellants have rendered advertising agency service is therefore unsustainable."

11.3.3 In *Ajanta Fabrication Vs. Commissioner of Central Excise, Meerut* reported in [2006 (4) STR 605 (Tri-Del.)] it was held as follows:-

"8. The appellant's contention is that it is a mere manufacturer/maker of signage boards. It does not undertake designing, visualizing or any of the activities carried out by an advertising agency. Instead, it does the physical part of painting, writing, manufacturing etc. It is the appellant's contention that the physical preparation and re-production of advertisement material remains excluded from the levy in terms of board circular dated 16-8-99. The portion relied on may be read:-

"In case of persons who are printing and publishing telephone directories, yellow pages or business directories, their activity is essentially of printing a readymade advertisement from the advertisers and publishing the same in the directory. Their

activity is similar to those carried out by newspapers or periodicals, as such this activity shall not attract service tax. However, if these persons also undertake any activity relating to making or preparation of an advertisement, such as designing, visualizing, conceptualizing etc., then they will be liable to pay service tax on charges made thereon."

The submission is that the above clarification leaves no room for doubt that 'making or preparation of advertisement' means activities like designing, visualizing, conceptualizing etc. and not the physical activity (manual labour) of painting or writing of the advertising material.

9. *When an almost identical issue came before this Tribunal in the case of Star Neon Sign, the Tribunal held as under:-*

*"We find that the term 'advertising agency' is defined in the Act and as per the definition the advertising agency is to mean any commercial concern engaged in providing any service connecting with the making, preparation, display or exhibition of advertising and includes advertising consultant. **The appellants are only manufacturing the sign boards** as per the requirements of their customers. Such an activity cannot be held to be advertising agency as the appellants are not rendering any advertising service. The person like the appellants cannot be called as advertising agency as they are only writing or preparing the sign boards at the behest of their customers. There is no evidence on record to show the relationship between the customers and the appellant is of advertising agency which is necessary for imposition of service tax."*

10. *The Tribunal also had occasion to consider the effect of the extended definition in the case of Zee Tele Films Ltd. and Star India (P) Ltd. The Tribunal held that the extended definition did not bring activities unconnected to those of an advertising agency within the scope of the levy. After discussing much case law on the effect of an extended definition, the Tribunal held that an extended definition did not supplant or contradict the plain meaning of the entry in the statute."*

11.3.4 The Ld. Advocate has relied on many decisions to support his contention that in respect of sale transactions, no service as an Advertising Agency was involved. In the case of *Market Chase Advertising Vs. Commissioner of Central Excise, Madurai* reported in [2008 (10) STR 598 (Tri-Chennai)] it was held as follows:-

"3. After considering the submissions of both sides, the appellants seem to have made out a firm case against the impugned demand of service tax. The case law cited by learned Counsel is to the effect that, for a person to be recognised as "advertising agency" as defined under Section 65 (3) of the Finance Act, he should be shown to have made or prepared advertisements. The trade notice cited by counsel clarified that, in the making or preparation of advertisements, there must be conceptualisation, visualization and designing of advertisements. This trade notice was noted by the Tribunal in the said cases and it was held that, unless these aspects of an advertisement were shown to exist, it cannot be said that any advertisement was made or prepared. In this view of the matter, the appellants cannot be held to have satisfied the requirements of 'advertising agency' defined under the Act. "

11.3.5 In the case of *William (LEA) India) Pvt. Ltd. Vs. Commissioner of Excise, Chennai-IV*, wherein it was disputed that the service rendered by advertising agency was of a composite nature, it was held as follows:-

"5.6. In the circumstances, we are certainly not enthused by the attempt of the department to straightjacket the appellants into the category of 'Advertising Agency Service'. This is not to say that activity provided by appellants does not fall under any taxable category listed out during the period of dispute in the Finance Act, 1994, but advertising agency service itself they certainly are not.

5.7 It is interesting to note that while the S.C.N. at para 4.1 alleges that appellants have provided composite service to Reader's Digest which have element of taxable service in the category of 'advertising agency service', 'business auxiliary service', and 'mailing list compilation and mailing service', however as per Section 65A of the Act, essential character of service is defined from the service of advertising agency and in terms of Section 65A(2)(C) *ibid*. The service will merit classification as "advertisement agency service". However, the adjudicating authority in para 11 of the impugned order has, after reproducing the definitions of "advertisement", "advertising agency" and "business auxiliary service", and "mailing list compilation and mailing" has without further justification merely concluded that service provided by appellants to Reader's Digest merits classification as taxable provided by advertising agency in relation to advertisement.

5.8. *In the event, without going into further details of the dispute or quantification of tax liability, we hold that the impugned order to the contrary confirming the demand of service tax liability on the appellants under the category of "advertisement agency service" cannot sustain and will require to be set aside, which we hereby do."*

11.3.6 In *Adbur Pvt. Ltd. Vs. Commissioner of Service Tax, Delhi*, reported in [2017 (5) GSTL 334 (Tri.-Del.)] it was held as follows:-

"8. *We have heard both the sides and perused the appeal records. The dispute in the present case mainly relates to the valuation of taxable service under the category of advertising agency service. There is also a issue of denial of Cenvat credit due to improper documentation. First of all, we note that in the appellant's own case for the subsequent periods, the demand raised on these very grounds have been dropped by the Original Authority and the Revenue has accepted the findings of the Original Authority. We note that in the orders dated 2-3-2017 and 25-7-2016, the Original Authorities examined the disputed issues at great length. It is noticed that the role of the appellant as a "pure agent" in terms of Rule 5(2) of the Service Tax (Determination of Value) Rules, 2006 has been examined in full detail. The Original Authority, after recording the satisfaction of 8 conditions mentioned under Rule 5(2), held that the appellants have fulfilled all the conditions of a pure agent acting on behalf of M/s. Dabur. The Original Authorities, in both these proceedings with respect to the appellants, for later periods, categorically held that the appellants being an advertising agency and a pure agent is not liable to pay service tax on amount payable to media companies on behalf of their clients. The commission received by the appellant only would be chargeable to service tax. It is clear that on the very same set of facts the service tax liability of the appellant, as demanded in the present proceedings, have been dropped for the subsequent periods by the Original Authorities. We are in agreement with these findings. Accordingly, we find no merit in the impugned order in confirming service tax liability against the appellant. Apart from the above, we also note that the issue has been clearly covered by the Board circular dated 1-11-1996 and the decision of Hon'ble Madras High Court in *Adwise Advertising Pvt. Ltd. (supra)* discussed earlier in this order. As such, the appellant will succeed in the appeal with reference to the demand of service tax."*

11.3.7 On the issue of wall painting service undertaken whether can be subjected to service tax or not, the decision rendered in the case of *Dhansree Publicity Vs. Commissioner of Central Excise* reported in [2008 (10) STR 209 (Tri.-Del.)] it was held as follows:-

"8. *In the present case, the matter which was to be advertised was already in the photographs supplied to the painter who merely painted the same matter on the walls. Similar contention that the activity of mere painting did not fall in the category of 'advertising agency' found favour with the Tribunal in the case of Ajanta Fabrication v. Commissioner of Central Excise, Meerut (supra), in which, in the context of the activity of making hoardings, sign boards and signages, it was held that such services did not partake or include the services (designing, conceptualizing, visualizing) normally rendered by advertising agencies. Even in Zodiac Advertisers v. Commissioner of Central Excise, Cochin (supra), it was held that, making and preparation of the advertisement was the most important and difficult part as it involved conceptualization, visualization and designing. The printed material was only a product. Therefore, where mere screen printing was undertaken, it was held that, there was no creative activity. Mere manufacturing the product as per the instructions and specifications of the job work would not amount to rendering the service which can fall in the category of 'advertising agency'.*

9. *In the present case, all the activities mentioned in the definition of 'advertising agency' were not carried out by the appellant, and the ratio of the decision in the case of Zodiac Advertisers v. Commissioner of Central Excise, Cochin (supra), as reflected in para 6 of the judgment would apply in the present case"*

11.3.8 Similarly, we find other decisions cited by the Appellant are relevant to their cause.

11.4 We also find that the adjudicating authority has in Para 15 adverted to the judgement in the case of *Safety Retreading Company Ltd. Vs. CCE, Salem* to hold that the Appellant is not eligible to avail the benefit of Notification No. 12/2003-ST. We are not able to agree

to the findings of the adjudicating authority as the above judgement has been set aside by the Hon'ble Supreme Court in [2017 (48) S.T.R. 97 (S.C.)] wherein it was held as follows:-

"13. Besides the above, the affidavit of the learned Commissioner, referred to above, proceeds on the basis that the appellant assessee is also liable to pay service tax on the remaining seventy per cent (70%) towards material costs in addition to the 30% of the retreading charges. This is clear from the following averments made in the said affidavit of the learned Commissioner:

"The relevant bills showed that the Appellant had paid service tax only on the labour component after deducting 70% towards material cost on the gross tyre Retreading charges billed and received for the period from 16-6-2005. In short, they have paid service tax only on the 30% of the tyre Retreading charges received from the customers, by conveniently omitting 70% of the consideration received towards Retreading charges to avoid tax burden.

The verification of invoices of the Appellant for the period from Jan.-2007 to March-2007, the officers noticed that the Appellant have shown material cost, patch cost and misc. charges i.e. Labour charges separately in their invoices. However, on the follow-up action the customers of the Appellant revealed that they have neither purchased nor received raw materials intended for Retreading and they had paid only the Retreading charges for carrying out the Retreading activity."

The invoices which the appellant assessee has also brought on record by way of illustration show the breakup of the gross value received. There is again no contest to the same. Leaving aside the question that the case now projected, with regard to lack of proof of incurring of expenses on goods and materials which has been transferred to the recipient of the service provided, appears to be an afterthought, even on examination of the same on merits we have found it to be wholly unsustainable.

There is no dispute that the decision as above is not relevant to the facts of these appeals.

11.5 Further, we find that the lower adjudicating in Para 17 of the impugned order computed the differential value from the Appellant's financial statements without analysing in detail whether the Appellant was indulging in making and preparation of the advertisements

involving conceptualization, visualization and designing. As such, inference drawn and findings are devoid of merits in the light of various decisions rendered as discussed in above paragraphs.

11.6 After appreciating the evidence and following the judicial precedents, we are inclined to hold that the advertising materials like glow sign boards, flex printing, brochures, stickers, tags, posters, hand bills, signages, etc., which cater to the requirements of the specific customers, on which VAT is paid, is not leviable to Service Tax. We are also of the view that Service Tax cannot be demanded in respect of cloth banners and wall painting transactions without first analyzing the nature of work undertaken by the appellant in detail.

12. Regarding dis-allowance of CENVAT credit we find that the Appellant, in the case of advertisement through FM/Visual media, at the behest of their clients were availing the services of FM and TV channels including satellite channels who charged service tax along with charges for broadcasting the advertisements. As it is a part of their advertisement work, it is an input service. The only condition for availing credit on inputs / input services is that the said services should be used directly or indirectly in providing the output service and in their case, the Appellant have directly utilised the services of broadcasting agencies and other advertising agencies to provide the output services and hence they are eligible to avail the service tax paid on the said service providers. We are not inclined to agree with the findings in the impugned order that the Appellants were acting as pure agents and hence not eligible to avail the

credit of Service Tax paid to the channel operators and FM operators. The Appellant is an advertising agency and so they can avail the services of broadcasting agencies and hence the services of broadcasting are an input service. At no point of time, the appellant were acting as intermediaries and hence the Appellants are entitled to avail the credit of Service tax paid by them as input services.

13. On the issue of invocation of extended period, we find that the appellant was issued with a Show Cause Notice dated 12.10.2007 *vide* C.No. V/30/16/2007-STU by the Assistant Commissioner of Central Excise and Service Tax, Madurai involving the same issue of suppression of Service Tax values when ST-3 returns filed were compared against the relevant financial statements of the appellant for the period from 01.04.2002 to 30.06.2006. Again involving the same issue and by invoking extended period, these impugned Show Cause Notices No. 03/2011-ST dated 03.11.2011, No. 09/2012-ST dated 11.10.2012 and No. 06/2013-ST dated 12.07.2013 for periods from 01.07.2006 to 31.07.2008, 01.04.2007 to 31.03.2011 and 01.04.2011 to 31.03.2012 were issued against the appellant demanding Service Tax and proposing penalties which is blatantly against the provisions of law and in contradiction to judicial discipline in view of the following Supreme Court decisions in the cases of:-

(i) Nizam Sugar Factory Vs. Collector of central Excise, AP
reported in [2008 (9) STR 314 (SC)]

(ii) ECE Industries Limited Vs. Commissioner of Central Excise, New Delhi reported in [2004 (164) ELT 236 (SC)]

14. In the result, the impugned orders are set aside on above terms with consequential reliefs, if any, as per the law.

(Order pronounced in open court on 05.01.2024)

Sd/-
(VASA SESHAGIRI RAO)
MEMBER (TECHNICAL)

Sd/-
(SULEKHA BEEVI C.S.)
MEMBER (JUDICIAL)

MK