# CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
## NEW DELHI

PRINCIPAL BENCH-COURT NO. 3

**SERVICE TAX APPEAL NO. 50284 OF 2017**

[Arising out of Order-in-Original DLI/SVTAX/002/COM/026/16-17 dated 31.10.2016 passed by the Commissioner, Service Tax, New Delhi]

**M/s Mahatta Multimedia (P) Ltd.**
12/2, Sarvpriya Vihar New Delhi 110016 **Appellant**

**Versus**

**Commissioner of Service Tax, Delhi II** **Respondent**
5th Floor, 14-15, Farm Bhawan
Nehru Place, New Delhi 110019

**Appearance:**
Present for the Appellant : Shri A K Batra, Chartered Accountant and Ms. Shakshi Khanna, Advocate

Present for the Respondent: Shri Rohit Issar, Authorised Representative

**COARM:**
**HON'BLE MS. BINU TAMTA MEMBER (JUDICIAL)**
**HON'BLE MR. P V SUBBA RAO, MEMBER (TECHNICAL)**

**FINAL ORDER NO. 51074 /2023**

**DATE OF HEARING/DECISION: 09.08.2023**

**P V SUBBA RAO:**

1. M/s. Mahatta Multimedia (P) Ltd.[1] filed this appeal to assail the Order in Original[2] dated 16.10.2016 passed by the Commissioner of Service Tax, Delhi II whereby she decided two Show Cause Notices[3] the first covering the period 1.4.2006 to 31.3.2011 and the second covering the period 1.4.2011 to 31.3.2012 partly dropping the demands proposed in the SCNs and partly confirming the rest and also imposing penalties.

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**1 Appellant**
**2 Impugned order**
**3 SCN**

There is no appeal by the Revenue on the part of the demand which is dropped. The appellant filed this appeal assailing the confirmation of the demand on various grounds.

2. We have heard learned counsel for the appellant and the learned authorised representative for the Revenue and perused the records. According to the learned counsel, the details of the demands confirmed in the two SCNs on various grounds are as follows:

| **Particulars** | **SCN I** | **SCN II** | **TOTAL** |
|---|---|---|---|
| **Period Covered** | **2006-07 to 2010-11** | **2011-12** | |
| Demand proposed under SCN | 1,67,54,376 | 94,15,107 | 2,61,69,483 |
| Less: Demand dropped in impugned order | 1,36,87,978 | 88,02,656 | 2,24,90,634 |
| **Demand confirmed in impugned order** | **30,66,398** | **6,12,451** | **36,78,849** |
| Demand for the period **01.04.2006 to 30.09.2006** confirmed for the period beyond five years **(on approximate basis)** | 4,40,574 | | 4,40,574 |
| Demand confirmed on miscellaneous income held as not towards the provisioning of service by the ld. Adjudicating Authority. | | 1,96,528 | 1,96,528 |
| Demand confirmed on mercantile basis for the period 01.04.2006 to 30.09.2006, when service tax was payable on receipt basis. | 25,18,982 | | 25,18,082 |
| Demand confirmed on closing balance of advances from customers. | 1,08,382 | 34,809 | 1,43,191 |
| **Balance demand** | **(1,540)** | **3,81,114** | **3,79,574** |
| **Balance demand without taking into consideration the demand pertaining to the period 01.04.2006 to 30.09.2006** | **4,39,034** | **3,81,114** | **8,20,148** |
| Appellant has paid Rs. 7,88,349/- & 2,21,799/- through CENVAT Credit during the period 2006-07 to 2010-11 and 2011-12 respectively. | **7,88,349** | **2,21,799** | **10,10,148** |

3. Learned counsel for the appellant made the following submissions:

a) Demand of Rs. 4,40,574/- raised in the first SCN and confirmed by the impugned order cannot be sustained because it was raised beyond the extended period of five years. This fact was also submitted to the adjudicating authority, who, however, held that the demand was within the period of five years reckoning the last date for filing the ST-3 returns as the relevant date. The limitation of five years should be reckoned from the date on which the return was filed or if no return is filed by the last date for filing the return, such last date for filing the return. He also produced before us a photocopy of the Return filed with the stamp and acknowledgement of the office and submitted that if that date is reckoned, the demand is beyond five years. He, therefore, submits that this demand needs to be dropped.

b) Miscellaneous income which could not be attributed to any service is not exigible to service tax as correctly held by the adjudicating authority. However, an error has crept in and while confirming the demand an amount of Rs. 1,96,528/- pertaining to service tax on miscellaneous income was included by the adjudicating authority and this needs to be dropped.

c) During the period 1.4.2006 to 30.9.2006, service tax was payable only on receipt and not on mercantile (or accrual) basis and therefore, an amount of Rs 25,18,982/- confirmed against the first SCN needs to be dropped.

d) Service tax has been confirmed on the advances received from the customers leading to double taxation- once on the advance and again on the invoice for the service rendered. Therefore, an amount of Rs. 1,08,382/- in the first SCN and Rs. 34,809/- in the second SCN need to be dropped.

e) After confirming the demand in the impugned order, the learned commissioner had appropriated the amounts paid by the appellant in cash but had not so appropriated the amounts which it paid through its CENVAT account. This needs to be done.

4. Learned authorised representative for the revenue reiterated the impugned order.

5. After considering the submissions on both sides, we find that this is a fit case to be remanded to the original authority for verification and redetermination of the duty and penalties with the following observations.

a) The relevant date for reckoning the limit for raising a demand is the date on which the return is filed or if it is not filed by the due date, the last date on which the return was required to be filed. Therefore, no demand can be raised invoking extended period of limitation beyond five years from the date of filing of the return if it is filed before the due date.

b) The confirmation of demand on miscellaneous income found by the adjudicating authority as not attributable to rendering of any taxable service cannot be sustained and needs to be dropped.

c) The facts of the case need to be examined if during the relevant period, the service tax was payable on receipt or on mercantile basis and the demand of tax must be re-determined accordingly.

d) It must be examined if the demand of service tax was confirmed on advances received leading to double taxation and if so, the demand needs to be re-determined accordingly.

e) Any amount of service tax paid either through cash or through CENVAT account needs to be appropriated against the confirmed demand.

6. The appeal is allowed by way of remand to the original authority to re-determine the demand of service tax and penalties as above.

[Order pronounced in open court]

**(BINU TAMTA)**
**MEMBER (JUDICIAL)**

**(P V SUBBA RAO)**
**MEMBER (TECHNICAL)**

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