CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
<u>NEW DELHI</u>

PRINCIPAL BENCH – COURT NO. – IV

Service Tax Appeal No. 55353 of 2023 [SM]

[Arising out of Order-in-Appeal No. BHO-EXCUS-001-APP-10-23-24 dated 06.04.2023 passed by the Commissioner of CGST & Central Excise (Appeals), Bhopal]

M/s. Star P.R. **...Appellant**
(Prop. Dharmendra Singh Thakur)
D-11, Sector 4, Vinay Nagar,
Gwalior, M.P. - 474012

VERSUS

Principal Commissioner of CGST,
Customs & Central Excise – Bhopal **...Respondent**
48-A, Administrative Area,
Arera Hills, Bhopal - 462011

<u>APPEARANCE:</u>
Shri Pankaj Jain, Advocate for the Appellant
Shri Arun Sheoran, Authorized Representative for the Respondent

CORAM: HON'BLE DR. RACHNA GUPTA, MEMBER (JUDICIAL)

DATE OF HEARING: 24.04.2024
DATE OF DECISION: 24.04.2024

FINAL ORDER No. <u>55852/2024</u>

<u>DR. RACHNA GUPTA</u>

The appellant herein is engaged in providing the taxable services. The department received an information from the Income Tax Department about an amount credit by the appellant under various sections of Form 26-AS of Income Tax Act for the Year 2015-16. It got revealed that total amount of Rs.58,68,200/- on which TDS has been deducted under different sections of Income Tax Act for the Financial Year 2015-16 is received by appellant towards sale of service, but no service tax was paid. The appellant despite being summoned had not provided any information and clarification about the income on which the TDS was being deducted. In absence thereof but in view of the section under which the TDS was deducted, department formed the opinion that the appellant has rendered a taxable service and has incurred service tax liability on its activity of selling the advertisement space which got calculated to the tune of Rs.8,50,889/-. The said amount was proposed to be recovered along with the interest and the proportionate penalties vide Show Cause Notice No. 46/2020-21 dated 28.09.2020. The said proposal was rejected by original adjudicating authority vide Order-in-Original No. 96/2021-22 dated 31.03.2022. Review Order bearing No. 19/2022 dated 23.06.2022 was passed by Principal Commissioner of CGST & Central Excise, Hqrs. Bhopal against the said Order-in-Original. Pursuant to the said review order that department filed an appeal before Commissioner (Appeals). The department appeal was allowed vide Order-in-Appeal No. 001-10-23-24 dated 06.04.2023. Being aggrieved of the said order, the assessee-appellant is before this Tribunal.

2. I have heard Shri Pankaj Jain, learned Advocate for the appellant and Shri Arun Sheoran, learned Authorized Representative for the department.

3. Learned counsel for the appellant has mentioned that appellants are engaged in business of selling of space for advertisement in print media. The said activity is outside the purview of service tax in terms of clause (g) of Section 66D of Finance Act, 1994 as has got incorporated in the act w.e.f. 01.10.2014 vide Notification No. 18/2014-ST dated 25.08.2014. The period involved in the present appeal is the Financial Year

2015-16 i.e. the period subsequent to the said amendment. Hence, the proposal of show cause notice was rightly set aside by the original adjudicating authority. It is submitted that the review order as well as the order under challenge have wrongly relied upon the statement in Form 26-AS. The C.A. Certificate as was produced by the appellant has wrongly been ignored by Commissioner (Appeals). The C.A. Certificate has sufficiently explained the receipt that the impugned income of Rs.58,68,200/- for the Financial Year 2015-16 was from the sale of advertisement. The evidence has wrongly been ignored while considering third party evidence. The demand has wrongly been confirmed based on said third party evidence. The Order-in-Appeal confirming the said demand is therefore prayed to be set aside and appeal is prayed to be allowed.

4. While rebutting these submissions, learned Departmental Representative has mentioned that original adjudicating authority had failed to appreciate that from Form 26-AS of Financial Year 2015-16, it is apparent that payment of Rs.11,33,700/- are made to the party involving deduction of TDS under Section 194C of the Income Tax Act. Learned Departmental Representative has impressed upon that under Section 194C of the Income Tax Act, the TDS is deducted only if it is a case of receipts from work contract or contract of labour. It has also been mentioned that the TDS for payment of Rs.47,34,500/- in Form 26-AS, was deducted under Section 194J of the Income Tax Act. The said section is invoked for deducting TDS when the income is towards the professional or technical services fee. The appellant as well as the original adjudicating authority have considered the impugned activity as

sale of space in newspaper. Income from the said activity, the tax deduction thereof is not covered under Section 194C nor under Section 194J of the Income Tax Act. Onus was upon the appellant to produce the documents to prove the exact nature of their activity so as to avail the benefit of exemptions given under notification as is relied upon by the appellant. Learned Department Representative further brought to notice that from the show cause notice itself, it is apparent that appellant failed to cooperate the department as no document was provided to clarify the appellant's stand. The reply dated 24.03.2022 was filed before the original adjudicating authority for the first time. The contents of the said reply relied upon by the original adjudicating authority has still resulted into the contradictory findings as has rightly been observed by Commissioner (Appeals) in Para 5.1 of the order under challenge. Impressing upon no infirmity in the findings, appeal is prayed to be dismissed.

5. Having heard the rival contentions and perusing the entire records, I observe and hold as follows:

5.1 There is no denial to the fact that the appellant is involved in the business of purchasing advertisements from the customers at certain rates specified by the newspapers house which include 3% to 5% of profit margin of appellants. There is also no denial to the fact that the appellant is not receiving any amount from the newspapers. These admitted facts are sufficient for me to hold that the appellant activity is purely a trading activity, however, trading of the space for advertisements. The original adjudicating authority has set aside the demand relying upon sub clause (g) of Section 66 of the Finance Act, 1994 as was impressed upon by the appellant themselves. The said provision has been perused:

> **66D. Negative list of services: (Services on which tax is not to be levied in terms of Section 66B of Finance Act). The negative list shall comprise of following services namely:**
>
> (a)xxxxxxxxxxxxxx
>
> (b)xxxxxxxxxxxxxx
>
> (c)xxxxxxxxxxxxxxx
>
> (d)xxxxxxxxxxxxxxx
>
> (e)xxxxxxxxxxxxxxx
>
> (f)xxxxxxxxxxxxxxxx
>
> (g) selling of space for advertisements in print media
>
> (h)xxxxxxxxxxxxxxxx

5.2 It is also observed that the said provision has got incorporated in Section 66D vide Notification No. 18/2014-ST dated 25.08.2014 and is in effect from 01.10.2014. The period involved in the present appeal is 2015-16 i.e. after the introduction of the said sub clause (g). The perusal makes it crystal clear that the activity of the appellant i.e. selling of space for advertisement in print media irrespective it is the sale of space but it is categorized as a service exempted from the scope of service tax liability. In light of the said provision, I do not find any infirmity in the findings arrived at by the original adjudicating authority.

5.3 In the order under challenge, Commissioner (Appeals) has considered the findings of original adjudicating authority as contradicotry in Para 5.1 thereof. The Para reads as follows:

> *5.1 From the above it is evident that the findings of adjudicating authority are contradictory. On the one hand, the adjudicating authority has mentioned that the activity carried*

out by the Respondent is providing advertising agency service (which is a taxable service) whereas on the other hand the adjudicating authority has classified the said activity as sale of advertisement in print media (covered under Negative list, hence not liable for payment of service tax).

5.4 The bare perusal makes it clear that the activity of the appellant for providing Advertising Agency Service is wrongly held to be contradictory to the sale of advertisement in print media. As has already been discussed, sale of space in print media is considered as an activity/service out of the scope of service tax liability. It is held that foremost there is no contradiction; secondly, the activity incurs no service tax liability as per the statute itself. Hence, the findings in this Para are held to be apparently wrong and contrary to the statute.

5.5 I have also perused the certificate filed by the Chartered Accountant of the appellant. It has been certified therein as follows:

"This is to certify that M/s. Dharmendra Singh Thakur, D-11, Sector-4, Vinay Nagar, Gwalior based on information, documents and records provided to me during a financial year 2015-16, were receipts of Rs.58,68,200/- from the sale of advertisement which received from their clients in relation to publication in newspapers after deduction of TDS."

5.6 The certificate has sufficiently clarified that the amount on which the service tax liability is proposed in the impugned show cause notice was purely an amount from the sale of advertisement. Commissioner (Appeals) has ignored the same for sake of the third party evidence i.e. the evidence received from the Income Tax Department. This Tribunal in a decision titled as **Kush Constructions Vs. CGST NACIN, ZTI, Kanpur reported as**

2019 (24) GSTL 606 (Tri.-All.) has held that difference in figures obtained from Form 26-AS filed under Income Tax Act, 1961 cannot be made the basis for raising service tax demand without examining the reasons as to whether the amount as reflected in the income tax return was the consideration for providing any taxable service. In earlier decision of this Tribunal, in the case of **Sharma Fabricators and Erectors Pvt. Ltd. Vs. CCE, Allahabad reported as 2017 (5) GSTL 96 (Tri.- All.),** it was held that the findings confirming the service tax liability on the basis of TDS certificate issued to the assessee are nothing but the result of presumptions. The TDS certificate is in any case a third party evidence, same cannot be relied upon to confirm the demand in absence of any other evidence on record.

5.7 In the present case also, I do not find any other evidence than the Income Tax TDS statement which may prove that the activity rendered by the appellant i.e. sale of advertisement space to print media incurred any service tax liability. Learned Departmental Representative has laid emphasis upon the tax deduction under Section 194C and 194J of the Income Tax Act. It is impressed upon that the said perusal is sufficient to reflect that the appellant is rendering either Works Contract Services (TDS under Section 194C) or is receiving money on account of professional fee (194J of Income Tax Act). However, Section 194C is perused. No doubt it states that any person responsible for paying any sum to the resident contractor or sub-contractor for carrying out any work including the supply of labour with any of the persons as enlisted in the said section, the TDS shall be deducted therein. But the expression 'work' in the section is clarified to include various other things including advertisement. This particular perusal is sufficient for me to hold that deduction of tax against an income received by the appellant for selling the advertisement space to print media is possible under Section 194C. Similarly under Section 194J, it includes the tax deduction for professional services fee. The appellant apparently is into profession of trading. To my opinion, the tax deduction under Section 194J is not contrary to the nature of the income in the hands of the appellant.

6. With these observations, I do not find any cogent basis nor any cogent evidence to support the findings in order of Commissioner (Appeals). The order is held to be mere presumptive that too on the basis of third party evidence. Resultantly, the order is hereby set aside. Consequent thereto, the appeal stands allowed.

[Dictated and pronounced in the open Court]

(DR. RACHNA GUPTA)
MEMBER (JUDICIAL)

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