

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066
CUSTOMS APPEAL BRANCH

Appeal No. ST/120 /2006

Date 28/01/2008

Assistant Registrar
C.E.S.T.A.T, New Delhi

To :
M/S MCCANN ERICKSON (INDIA) PVT LTD
8, BALAJI ESTATE, GURU RAVIDAS MARG,
KALKAJI, DELHI
110019

M/S MCCANN ERICKSON (INDIA) PVT LTD

Appellant

THE COMMISSIONER OF SERVICE TAX, DELHI

Vs
Respondent

I am directed to transmit herewith a certified copy of Final order No. ST/06/08 Customs dated 18/01/08
passed by the Tribunal under Section 129, (B) of the Customs Act, 1962 & Financial Act 1994 relating to Service Tax

Assistant Registrar
(Customs Appeal Branch)

Copy to :

1. Respondent

THE COMMISSIONER OF SERVICE TAX, DELHI
NEW DELHI

2. Adv. / Consult

MR ANITA RASTOGI
PRICE WATER HOUSE COPERS PVT LTD, SUCHETA BHAWAN 11-A, VISHNU DIGAMBER MARG NEW
DELHI-110002

3. S.D.R.
4. J.C.D.R.
5. Bar association, CESTAT, New Delhi
6. M/s. Deeparchi Publications, M-93, marg, 43, saket, New
7. M/s Centax Publications (P) Ltd., 1512-E, Bhishm Pitamah
8. Excise & Customs cases, B-37, Sector -1, NOIDA - 201301
9. R.Venkatraman Constt. 44-B, S.Suncity, Ghaziabad -
10. Nidheshak publications, I.P.Estate, new Delhi
11. Taxmann Allied Service Pvt Ltd., 21/35, West Punjabi Bagh,
12. Co, Law Institution
13. TAX INDIA, B-XI/8183, Vasant Kunj, New Delhi - 110070
14. Office Copy
15. Guard file


Assistant Registrar
(Customs Appeal Branch)

**CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL
WEST BLOCK-II, R.K. PURAM, PRINCIPAL BENCH, NEW DELHI,
COURT NO. 1**

Service Tax Appeal No. 120 of 2006

Date of Hearing/ Decision: 18.01.2008

For approval and signature:

Hon'ble Mr. S.S. Kang, Vice President
Hon'ble Mr. T.K. Jayaraman, Member (Technical)

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|--|---|
| 1. Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982. | : |
| 2. Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not? | : |
| 3. Whether Their Lordships wish to see the fair copy of the Order? | : |
| 4. Whether Order is to be circulated to the Departmental authorities? | : |
-

M/s McCann Erickson (India) Pvt. Ltd.

...Appellant
[Rep. by Ms. Anita Rastogi, Advocate]

Vs.

CST, Delhi

...Respondent
[Rep. by Mr. R.K. Verma, DR]

Coram: Hon'ble S.S. Kang Vice President
Hon'ble T.K. Jayaraman, Member [Technical]

Final ORDER No ST/6/08

Per: T.K. Jayaraman:

This appeal has been filed against order-in-original No.5/RK/2006 dt. 15.2.2006 passed by Commissioner of Service Tax, Delhi.

2. The appellants render taxable service under the category of "advertising agency service". They entered into contract with their clients for providing advertisement agency service. The appellants render advertising services to

various clients in the form of creative agency wherein they create advertisement by themselves or their third party media agency wherein they do media printing and /or buying for advertisement to be published in print/ electronic media. They were receiving 15% agency commission from authorized broadcasting and print media during the period April 2000 to March 2001. The appellants had passed on the above mentioned commission to their clients. The case of the department is that the appellants should have included the whole amount of commission received by them in the gross taxable value. Proceedings were initiated against the appellants for recovery of the differential service tax. The adjudicating authority confirmed the demand of service tax to the tune of Rs. 1,16,29,505/- under Section 73 read with Section 78, 76 and 77 of the Finance Act 1944. read with Rule 6(1) of the Service Tax Rules. He demanded interest under Section 75. A penalty of Rs, 100/- per day was imposed under Section 76 of the Act. Penalty of Rs. 1,16,29,505/- was imposed under Section 78 of the Act for proposing the value of taxable services. Further, a penalty of Rs. 1,000/- was imposed under Section 77 of the Act.

3. Ms. Anita Rastogi, learned Advocate appeared on behalf of the appellants and Shri R.K. Verma, learned DR for the Revenue.

4. We heard both sides. The basic point which should be borne in mind is that service tax is levied on the gross amount received by the service provider from the recipient of the service for the services rendered. In this case, the appellant is the service provider. The appellant being an advertisement agency rendered advertising service by engaging print, electronic media etc. The tax authorities should see whether the appellants had discharged duty liability on the gross amount received from their clients. In this case, the various media are not clients of the appellant namely, the advertising agency. If the media gives discount of 15% to the appellant, that amount has nothing to do with the gross amount

received by the appellant from their clients to whom they rendered advertisement services. Therefore, there is no logic in demanding service tax on the discount of 15% received by the appellant from print media. Identical issue was the subject matter of the Tribunal in the case of Euro RSCG Advertising Ltd. Vs. CCST, Bangalore reported in (2007) 9 STJ 56 (CESTAT Bangalore) wherein the issue was decided in favour of the appellants. The following findings given in the said decision are relevant and reproduced below:-

In the present case, a person or an organization who want to advertise their product approaches an advertising agency. Therefore such a person /organization who wants to avail the services of advertising agency becomes the client of the advertising agency. The advertisement can be done in various ways either through Print Media or through Radio or Television, etc. In order to fulfil the requirements of his client the advertising agency which is the service provider gets in touch with the appropriate media. In other words as far as the advertising agency is concerned, its client is not the media. In order to provide advertising services the advertising agency charges certain amounts from the clients. Such amounts are liable to service tax. With regard to the relationship between the advertising agency and the media, the advertising agency has to pay amount to the media and not the other way. To put it differently, the media such as broadcasting agency charges the advertising agency for insertion of the advertisement either in Print Media or in Television. In the present case, the media gives a discount of 15% to the advertising agency. If the tariff rate is Rs. 100/-, it is sufficient the advertising agency pay the media Rs. 85/- along with service tax. The service tax component received from the advertising agency in turn is remitted to the exchequer by the media agency. The appellants have demonstrated that they have not received any amount from the media. They got only a discount from them. Perhaps the word "commission" is misleading. There is actually no evidence that the said amount has been received by the appellant from the media. In any case, any amount received by the service provider from his client only is liable to service tax and not amounts received from others. The adjudicating authority has neither considered the factual position nor the legality of the entire issue. The impugned order 12/2005, dated 27.4.2005 has no merits. Since there is no service tax liability, there is no question of imposing penalty and demanding interest. Hence, we set aside the same and allow the appeal with consequential relief.

5. Moreover, the learned Advocate stated that for a subsequent period the learned Service Tax Commissioner has passed in his order dated 17.1.2008 dropped the proceedings initiated against the appellants.

6. On a careful consideration of the issue, we find that the case is squarely covered by the above decisions. Hence, we set-aside the impugned order and allow the appeal with consequential relief.

[Dictated and pronounced in the open Court].

[S.S. Kang]
Vice President

[T.K. Jayataman]
Member [Technical]

[Pant]