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

Appeal No. ST/603 /2007 - CU[DB] Date 23/06/2009

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

To :
C.C.E. CHANDIGARH
C.R. BUILDING, PLOT NO. 19, SECTOR 17-C,
CHANDIGARH 160017

C.C.E. CHANDIGARH Appellant

Vs

M/S CROSSBY ADVERTISING Respondent

I am directed to transmit herewith a certified copy of **Final order No.** S/200 **2009 CU[DB]** dated 21.05.09 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
M/S CROSSBY ADVERTISING
SCO 18, SECTOR-26, CHANDIGARH.
2. Adv. / Consult : VR Sethi, Adv
C/O Respondent

3 S.D.R
4 J.C.D.R.
5 Bar association, CESTAT, New Delhi
6 Director Publications, Customs, Excise. I.P. Estate, New Delhi
7 M/s Centax Publictions Pvt Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi - 3
8 Commercial Laws of India Pvt Ltd. Post Bag No. 1033, No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17
9 Raghuraman's 44-B, Regal Flat,Shipra Suncity, Indirapuram - 201010,Ghaziabad, DT, U.P.
10 M/s Manupatra Information Solutions Pvt Ltd. Excise & Customs Cases B-37, Sector - 1, Noida - 201301, Gautam Budh Nagar, (UP)
11 M/s. Deeparchie Publications, M-93, Marg. 46, Saket, New Delhi 110017
12 Taxindiaonline.com Pvt.Ltd, B-XI/8183,Vasant Kunj, New Delhi - 110070
13 Taxmann Allied Service Pvt Ltd., 21/35, West Punjabi Bagh, New Delhi - 110026
14 Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road,Ahmedabad-15
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Assistant Registrar
(Customs Appeal Branch)

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No.2, R.K.Puram, New Delhi-110066.
Principal Bench, New Delhi.

ST/603/07

(Arising out of Order-in-Appeal No.285/CE/CHD/07 dt.24.7.07 passed by Commissioner(Appeals), Chandigarh)

CCE, Chandigarh Appellant

Versus

M/s. Crossby Advertising Respondent

Appearance

Sh. L.B.Yadav, Authorised Departmental Representative(DR) For Appellant
Sh. V.R.Sethi, Adv. for the Respondent

Coram: Hon'ble Mr. D.N.PANDA, JUDICIAL MEMBER
Hon'ble Mr. RAKESH KUMAR, MEMBER (TECHNICAL)

Final Date of decision: 21.5.09
Order No. ST/200/09

Per D.N.Panda:

We heard this matter yesterday. In view of paucity of time, we could not pass this order. Therefore, we directed to list this matter for today for further hearing. Ld. Counsel Shri V.R.Sethi for the respondent submits that revenue's appeal has admitted the findings made by Ld. Commissioner(Appeals). That authority on examination of the MOU between the respondent and two other companies namely M/s. IB&W Communication Pvt. Ltd. and M/s. AK&I Advertisement Pvt. Ltd. came to the conclusion that the respondent had only shared profits of joint venture in terms of paragraph 1 in MOU between IB&W and the respondent.

2. Ld. DR Shri L.B.Yadav seriously reacts to the submission of the learned Counsel stating that Ld. Commissioner(Appeals) came to the conclusion that the receipt in the hands of the respondent was share of profit when no such claim was made before the learned adjudicating authority. Ld. adjudicating authority has come to the conclusion that the receipt of money by the respondent from IB&W and AK&I was misconceived to be profit. Therefore, he prays that the matter should go back to the learned adjudicating authority to give a scope to the respondent to adduce evidence and plead their case.

3.1 Heard both sides and perused the records.

3.2 Ld. Counsel Shri Sethi has placed before us the MOU between IB&W and the respondent. When we go through that documents that clearly bring out a relationship between the respondent and the IB&W to be a joint venture partnership. Para 12 of the MOU makes clear that the service provider was IB&W since all receipts have gone to the bank account of IB&W and the respondent was merely [illegible] agent of that concern to book the advertisement on behalf of IB&W. We agree with the learned Commissioner(Appeals) to the extent of his finding that profit was consideration from IB&W paid to the respondent. To this extent the service provided by the respondent can not even be found to be in the capacity of contractor. Ld. Commissioner(Appeals) has also found that the service tax liability was discharged by the joint venture partner i.e. M/s. IB&W in respect of the services provided to the clients through the respondent for which the later was paid share of its profit by IB&W. We are satisfied that the respondent should not be brought to double taxation so far the receipt of portion of the money received from IB&W is concerned.

4.1 We have no material to read today about the relationship of the respondent and M/s. AK&I Advertisement Pvt. Ltd. In absence of such document, nature of relationship between the parties is not possible to be decided. Therefore, we consider it proper to remand on this limited aspect for examination of the relationship of the respondent with AK&I Advertisement Pvt. Ltd. in terms of evidence existing before the adjudicating authority to decide taxability of receipts of respondent from that concern.

4.2 We may mention that our aforesaid conclusion in respect of IB&W may be useful to the ld. adjudicating authority while he deals with the Agreement between Respondent and AK&I. We may add here also that Tribunal has already decided the role of sharing of profit of joint venture and taxability thereof in the case of NICO S.A. vs Commissioner of Service Tax,Delhi reported in (2009)20STT.113(New Delh.CESTAT). Ld. Adjudicating Authority may take help this decision also while dealing the matter in the remand proceedings. Needless to mention that the respondent is entitled to fair opportunity of hearing and may lead evidence in his support. It is also expected that the ld. adjudicating authority shall pass reasoned and speaking order to do justice.

5. In the result, revenue's appeal is partly dismissed to the extent indicated aforesaid and partly remanded to the ld. adjudicating authority as above.

Order dictated in the open Court.

(D.N.Panda)
Judicial Member

(Rakesh Kumar)
Member Technical

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