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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/408 /2008 - CU[DB] Date **13/02/2012**

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 FACINATE ADVERTISING & MARKETING Respondent

I am directed to transmit herewith a certified copy of **Final order No.ST/A/92/ 2012 CU[DB]** dated 08.02.2012 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 FACINATE ADVERTISING & MARKETING
SCO 1104-05, SECTOR 22B,
CHANDIGARH.

2. Adv. / Consult MR. V.R. SETHI, ADV.
401, SATYAM CINEMA BUILDING,
RANJIT NAGAR, DELHI – 110 008.

3. C.D.R
4. Bar association, CESTAT, New Delhi
5. Director Publications, Customs, Excise. I.P. Estate, New Delhi
6. M/s Centax Publictions Pvt Ltd.,1512-B, Bhishm Pitamah marg,Opp. ICICI Bank of Defence Colony, New Delhi-3
7. Company Law Institute of India Pvt Ltd.,No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17
8. Taxmann Allied Service Pvt Ltd., 59/32, New Rohtak Road, New Delhi - 110005
9. Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road, Ahmedabad-15
10. LAWCRUX Advisors Pvt Ltd, LAW House,1-8,Sector - 10, Faridabad 121003 (Haryana)
11. TaxIndiaOnline.com Pvt Ltd., Unit No.1, 2nd Floor,Vasant Arcade,Nelson Mandela Road, Vasant Kunj, New Delhi - 110070
12. Office Copy
13. Guard file

Assistant Registrar
(Customs Appeal Branch)

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
West Block No.2, R. K. Puram, New Delhi.

Date of hearing/decision 18.01.2012

Service Tax Appeal No. 408 of 2008
(Arising out of order in appeal No. 129/CE/CHD/2008 dt. 12.2.2008 passed by the Commissioner (Appeals-I) Central Excise, Chandigarh).

CCE, Chandigarh Appellant
Rep. by Sh. B.L. Soni, DR for the appellants.

Vs.

M/s Facinate Advertising & Marketing Respondent
Rep. by Sh. V.R. Sethi, Advocate for the respondent.

Coram: Hon'ble Sh. D. N. Panda, Judicial Member
Hon'ble Sh. Rakesh Kumar, Technical Member

Final ORDER No. ST/A/92/12-Cus

Per: Shri D. N. Panda:

Learned DR submits that ld. Commissioner (Appeals) committed an error of law holding that incentives received by an advertising agency services is not taxable. Similarly, he is wrong to hold that the bad debt and cash discount are not taxable. He also submits that when the Chartered Accountant certificate on discount aspect was produced, that was not found to be correct.

2. Ld. Counsel for the respondent supports the appellate order.

3. Heard both sides and perused the record.

4. Incentive is a receipt for appreciation of performance of services provided. How such forms part of taxable service remained unexplained. We are unable to find how the revenue shall succeed

saying that incentive shall be brought to tax when such incentive whether shall be payable was not known to the respondent while providing service. Therefore, the dispute on that count is resolved against the revenue.

5. So far as the bad debt is concerned, that was not a consideration received and non receipt of consideration when becomes bad debt, by its nature that do not enter into tax ambit. Therefore, that shall not be taxed.

6. In so far as cash discount is concerned, no logic is shown to us as to how there was understatement of consideration when the discount amount was not received towards consideration. We reiterate that the discount not being received does not enter into realm of consideration received. Consequently, that shall also not be liable to tax.

7. In the result, revenue's appeal is dismissed.

(Dictated and pronounced in the open Court)

(D.N. Panda)
Judicial Member

(Rakesh Kumar)
Technical Member

Pant