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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/519 /2011 - CU[DB] Date **05/06/2012**
ST/S/994/11

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

To :
MILLENA VISION ADVERTISING PVT. LTD.,
44-A/2, JASSUM HOUSE, KALU SARAI, SARPRIYA
VIHAR, NEW DELHI.
110016

MILLENA VISION ADVERTISING PVT. LTD., Appellant

Vs

C.C.E. DELHI II Respondent

I am directed to transmit herewith a certified copy of **Final order No.ST/A/414/ 2012 CU[DB]** dated 28.05.12 passed by the Tribunal under **Section 129, (B) of the Customs Act,1962 & Financial Act 1994 relating to Service Tax**

Alongwith Stay Order No ST/S?628/12

Assistant Registrar
(Customs Appeal Branch)

Copy to :

1. Respondent
C.C.E. DELHI II
C.R. BUILDING, I.P. ESTATE, NEW
DELHI 110002

2. Adv. / Consult
MR.MISHRA ASSOCIATES
205-206, ADVAIT,B/S SANDESH PRESS,
VASTRAPUR, AHMEDABAD

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.II, R.K. PURAM, NEW DELHI-110066

COURT NO. II

ST/Stay/994/2011 in & Appeal No. ST/519/2011

[Arising out of Order-in-Appeal No.743/S. Tax/Appeal/D-II/2010 dated 6.12.2010 passed by the Commissioner (Appeals), Central Excise, New Delhi]

Date of Hearing/decision: 28th May, 2012

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. Millenea Vision Advertising Pvt. Ltd., Appellant

Vs.

CCE, Delhi-II Respondent

Present for the Appellant : Shri R.K. Bhalla, C.A.
Present for the Respondent : Shri Amresh Jain, D.R.

Coram: Hon'ble Shri D.N. Panda, Judicial Member;
Hon'ble Shri Mathew John, Technical Member

FINAL ORDER NO. ST/A/414/12-Cus.
Stay order No. ST/S/628/12-Cus.

Per D.N. Panda:

Learned Chartered Accountant submits that the appellant faced demand by adjudication bringing the appellant to the fold of Section 65(105)(e) read with Section 65(3) of the Finance Act, 1994. The activity carried out by the appellant was to obtain advertisement material and handing over the same to advertisement agency for advertisement. This is clear from one of the sample copy of bills appearing at page 73 of the appeal folder. He places from that page to show that commission was received for the above activity carried out by appellant on which service tax was realised by M/s. Square Communication Pvt. Ltd. Similarly, some of the invoice copies appearing in appeal folder also demonstrate such aspect. Board's Circular No. 64/13/2003 dated 28.10.2003 does not bring the appellant to the fold of Finance Act, 1994 as a space seller. Accordingly, requirement of pre-deposit may be waived.

2. Learned D.R. for Revenue submits that gross amount received by the appellant for advertisement escaped taxation. But the appellant says that 15% discount being receipt is only liable to tax on which tax has been paid. According to Revenue, loss of revenue is due to non-payment of tax on gross amount received by the appellant. Therefore, there should not be waiver of pre-deposit.

3. Heard both sides for sometime and also perused the record. Copy of show cause notice is available at page 11 of appeal folder. That does not speak, how appellant should be brought to tax when no violation of the law or escapement of

levy is indicated therein. It only discloses that there was short payment of service tax by a tick mark to para 2 thereof. It is surprising why proper charge was not framed in show cause notice to bring the appellant to the proper taxing entry. Hon'ble Supreme Court in the case of Oryx Fisheries Ltd. vs. UOI, reported in 2011 (266) ELT 0422 (S.C.) has held that following of empty formality is pretence of justice. This is the case to which such ratio is applicable. It is high time that Revenue should take care to issue appropriate show cause notice for realisation of legitimate dues of the state without the same being issued in haste or hurry or callous manner. In absence of proper show cause notice, ratio laid down by the Apex Court in the case of Metal Forging vs. UOI – 2002 (146) ELT 0241 (S.C.) shall also apply.

4. We are conscious that short payment, if any, could have been realised by appropriate show cause notice providing foundation for defence with the nature of allegation well stated in the show cause notice itself. We do not rule out taxability of gross amount, if any, if that is appropriately taxable under proper taxing entry issuing well founded show cause notice. We do appreciate that only on the discount portion service tax has been averred to have been paid. At the interest of Revenue it can do well to examine the invoices issued by M/s. Square Communication (P) Ltd. at their end to find out

whether the taxes collected from appellant have gone into treasury and whether that collecting agency has complied to the law. For ill founded show cause notice, the appellant should not suffer.

5. When the aforesaid observation come forward, there is no point to keep the appeal pending. Therefore, dispensing requirement of pre-deposit, appeal is also allowed.

(Dictated & pronounced in the Open Court.)

(D.N. PANDA)
JUDICIAL MEMBER

(MATHEW JOHN)
TECHNICAL MEMBER

RK