IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI PRINCIPAL BENCH, COURT NO. III

Service Tax Appeal No. ST/59308-59309/2013-[DB]
[Arising out of Order-In-Appeal No. 98(ST) RPR-I/2013dated 15.05.2013 passed by Commissioner (Appeals-I), Raipur]

For approval and signature:
Hon'ble Mr. S.K. Mohanty, Member (Judicial)
Hon'ble Mr. B. Ravichandran, Member (Technical)

C.C.E. & S.T., Raipur ...Appellant
M/s. Chattisgarh Samvad

Vs.

M/s. Chattisgarh Sambad …Respondent
C.C.E. & S.T., Raipur

Appearance:
Mr. Ranjan Khanna & Sanjay Jain (DR) for the Appellant
Mr. Manish (Advocate) for the Respondent

CORAM:
Hon'ble Mr. S.K. Mohanty, Member (Judicial)
Hon'ble Mr. B. Ravichandran, Member (Technical)

Date of Hearing/Decision.31.01.2017

Final Order No. 50643-50644/2017

Per B. Ravichandran:

These two appeals are against a common impugned order dated 16.05.2013 passed by the Commissioner (Appeals-I) Raipur. The assessee/ appellant is contesting the liability of service tax confirmed by the impugned order. The Revenue is contesting the non imposition of penalty on the assessee/ appellant.

2. Brief facts of the case are that the assessee appellant is a society created by Government of Chhattisgarh for the purpose of activities of advertisement. The scope of function of the assessee/

appellant is that all the Department Undertakings, Government Bodies of Chhattisgarh Government would make advertisement only through them. They will design and make arrangements for publishing the advertisement through print media and electronic media. The assessee/ appellant would also produce films, documentaries, websites for publication of programmes, achievements etc. Further, they would also prepare advertising materials for Ministries, Corporation, Boards of State Govt. The dispute in the present case relates to a portion of consideration received by the assessee/ appellant from various Govt. authorities while undertaking the work of advertisement for such departments. The Revenue proceeded to demand and recover service tax on the 10% charges received by the assessee appellant from various Govt. Departments over and above the actual expanse incurred and billed by the persons who are ultimately executing the advertisement work as per the directions of the assessee/ appellant. The lower authorities held that such charges are liable to tax under the category of Business Auxiliary Service in terms of Master Circular dated 23.08.2007 issued by CBEC. The said circular clarifies that business/ agencies who are canvassing advertisement work on commission basis are liable to be taxed under BAS and not as advertising agencies. The impugned order confirmed the service tax demand of Rs. 10,74,562/-. However, penalties imposed under Section 76, 77 & 78 were waived.

3. The Ld. Counsel for the appellant/ assessee submitted that they are created as a Nodal advertising agency in respect of all advertising work for the various Govt. departments, undertakings,

semi Govt. bodies coming under Chhattisgarh Govt. They have the facilities of advertising agency. In most of the cases they do engage other professional advertising agency to carry out the work of publicity and advertisement as per requirement. The bills received along with service tax were shown in their bill to the Govt. department with a markup of 10% as 'other charges'. They have discharged service tax on the value of services received from the Govt. departments but not on the 10% charges collected. The demand presently has been confirmed under BAS for the 10% charges collected by them from Govt. departments. The Ld. Counsel submitted that the consideration received cannot be put to tax under two categories – one part under 'advertising agency' and the other part under 'BAS'. They have carried out only a single service to the Govt. departments, and as such, there is no activity covered under BAS to be taxed.

4. Ld. AR for Revenue apart from reiterating the grounds of appeal by Revenue, submitted that the appellant/ assessee has not discharged Service Tax on the 10% commission which is essential to get the advertisement work executed by an advertising agency. In terms of the Master Circular referred to above, the appellant/ assessee is liable to service tax for the canvassing work done by them.

5. We have heard both the sides and perused the appeal records.

6. Admittedly, the appellant/ assessee is registered with the department and has been discharging service tax under the

category of advertising agency service. The present dispute is not on their payment of service tax under this category. It is on the 10% charges collected by them from various Govt. departments along with the advertisement expanses. We have noted that the bills amounts raised by the advertising agency on the appellant/ assessee was reproduced with details in the bills raised by the appellant assessee to the Govt. Department. The advertisement agency who actually rendered the service have shown their value and service tax separately and the same is paid by the appellant assessee to such agency. The same account is reproduced with the details of person who carried out the advertisement in the invoice raised by the appellant assessee to the Govt. Department. Service tax on this amount, equal to already paid to the advertising agency, has also been shown and again paid by the appellant assessee to the Govt. However, they are showing addition of 10% as charges in their bill to the Govt. department. We find that the appellant assessee has been entrusted with the work of advertisement published by the Govt. Departments and they did discharge the work by engaging another agency. They have collected an extra 10% for their services over and above the actual amount paid to the advertisement agency. We find in such situation, the activities of the appellant assessee should have been covered under one single category for tax purpose. Admittedly, their payment of service tax under advertisement agency service has been accepted by the Revenue on part of the bill. The service tax being demanded now under BAS, is not legally tenable. The demand has been confirmed on the ground that the appellant assessee is not an advertising agency and are merely canvassing for the work by another advertising agency. If that being the case, the question of payment of service tax by the appellant assessee and the acceptance of the same by the Revenue under the category of advertising agency is not correct. The whole consideration received by the appellant assessee has to be either taxed under advertising agency or as a canvassing work (BAS) since full money has been collected from the Govt. Departments on a single bill. The dual approach by the Revenue is not legally sustainable. Having accepted the appellant assessee as advertising agency, a portion of the consideration in the same bill cannot be taxed under BAS. We find on this legal ground alone the impugned order is not sustainable. Accordingly, the same is set aside and the appeal by the appellant/assessee is allowed. The appeal by Revenue is dismissed.

(Dictated and pronounced in open court)

(B. Ravichandran)
Member(Technical)

(S. K. Mohanty)
Member (Judicial)

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