IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No. 2, R.K. Puram, New Delhi – 110 066.
Principal Bench, New Delhi

COURT NO. III

DATE OF HEARING : 19/04/2017.
DATE OF DECISION : 26/04/2017.

Service Tax Appeals No. 3630-3632 of 2012

[Arising out of the Order-in-Original No. 140-142/ST/PKJ/CCE/ ADJ/2012 dated 23/08/2012 passed by The Commissioner (Adjudication), Central Excise, New Delhi.]

M/s Adbur Private Limited — Appellant

Versus

CST, Delhi — Respondent

Appearance

S/Shri B.L. Narsimhan and Rachit Jain, Advocates – for the appellant.

Shri Ranjan Khanna, Authorized Representative (DR) – for the Respondent.

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

Final Order No. 53097-53099/2017 Dated : 26/04/2017

Per. B. Ravichandran :-

These three appeals are against common impugned order dated 23/08/2012 of Commissioner (Adjudication), New Delhi. The appellants entered into an agreement with M/s Dabur India Limited for providing various services like Media Planning, buying space and time slot on behalf of client, in various media, releasing advertisement in these media, organizing events, data base management, creative designing etc. In terms of the agreement the appellants acted as agent for their client (Dabur). They placed advertisements in media. The broadcasters offered discount on the gross value of media time/space, brought by the appellant. The said discount is passed on to the client. The media company/ broadcasters pay service tax on the net amount charged by it. The appellants as advertising agency paid service tax on the commission charged by them. The transaction involved can be captured as below :-

2. Gross media cost being Rs. 100/- a discount of 15% is offered by the broadcasters to the advertiser. The net media cost is Rs. 85/-. Agency commission to the appellant is Rs. 2.50. The total amount payable by advertiser client (Dabur) to the appellant is Rs. 87.50/-. This amount comprises of Rs. 85/- reimbursement to the broadcasters and Rs. 2.50 commission of the appellant. In this arrangement the broadcasters and the appellant were paying service tax on Rs. 85/- and Rs. 2.50 respectively. The dispute in the present appeal relates to the service tax liability of reimbursed amount received by the appellant from their clients towards media cost.

3. Proceedings were initiated against the appellant by issue of three show cause notices covering the period 01/10/2004 to 31/03/2011. The case was adjudicated resulting in confirmation of service tax demand of Rs. 90,68,45,633/- and imposition of

various penalties under Section 76, 77 and 78 of the Finance Act, 1994. The impugned order also demanded recovery of Cenvat credit of Rs. 30,47,326/- availed by the appellant on the ground that the invoices were in the name of unregistered premises. As such the credit availed is improper.

4. The learned Counsel appearing for the appellant submitted that appellants were issued show cause notice to demand service tax and to deny Cenvat credit on the same basis for subsequent periods also. There were three such notices covering the period April 2011 to March 2014. These demands have been dropped by the Commissioners. He drew our attention to the latest order dated 02/03/2017 of CST, Delhi – II. In the said order, the Commissioner followed the earlier adjudication order dated 25/07/2016 and dropped the demand. The order dated 25/07/2016 has attained finality, as no appeal has been filed by the Revenue against the same.

5. The learned Counsel also relied on Board Circular dated 01/11/1996 which specifically covered the issue of tax liability of advertising agency. In the said circular it is categorically mentioned that the amount paid by the advertising agency for space and time, in getting the advertisement published in the print/electronic media, will not be includable in the value of taxable service for the purpose of levy of service tax. It is clarified that the commission received by the advertising agency would be included in the taxable value. Reliance was also placed

on the decision of the Hon'ble Madras High Court in **Adwise Advertising Pvt. Ltd. vs. Union of India** reported in **2006 (2) S.T.R. 375 (Mad.)**. The Hon'ble High Court held that the consideration paid to print/electronic media for advertisement cannot be added to the taxable value of advertising agency. The same is not towards service rendered by the advertising agency.

6. On the denial of Cenvat credit, the learned Counsel submitted that there is no dispute regarding the eligibility of credit for the appellant. The denial is only on the ground that the invoices were made in the name of branch offices which were not registered with the Service Tax Department. In this connection, the learned Counsel relied on various decisions of the Tribunal like **Manipal Advertising Services Pvt. Ltd. vs. CCE, Mangalore** reported in **2010 (19) S.T.R. 506 (Tri. – Bang.)** and **General Electric International Inc. vs. CCE, Delhi** reported in **2009 (13) S.T.R. 565 (Tri. – Del.)**.

7. The learned AR reiterated the findings of the Original Authority.

8. We have heard both the sides and perused the appeal records. The dispute in the present case mainly relates to the valuation of taxable service under the category of advertising agency service. There is also a issue of denial of Cenvat credit due to improper documentation. First of all, we note that in the appellant's own case for the subsequent periods, the demand raised on these very grounds have been dropped by the Original

Authority and the Revenue has accepted the findings of the Original Authority. We note that in the orders dated 02/03/2017 and 25/07/2016, the Original Authorities examined the disputed issues at great length. It is noticed that the role of the appellant as a "pure agent" in terms of Rule 5 (2) of the Service Tax (Determination of Valuation) Rules, 2006 has been examined in full detail. The Original Authority, after recording the satisfaction of 8 conditions mentioned under Rule 5 (2), held that the appellants have fulfilled all the conditions of a pure agent acting on behalf of M/s Dabur. The Original Authorities, in both these proceedings with respect to the appellants, for later periods, categorically held that the appellants being an advertising agency and a pure agent is not liable to pay service tax on amount payable to media companies on behalf of their clients. The commission received by the appellant only would be chargeable to service tax. It is clear that on the very same set of facts the service tax liability of the appellant, as demanded in the present proceedings, have been dropped for the subsequent periods by the Original Authorities. We are in agreement with these findings. Accordingly, we find no merit in the impugned order in confirming service tax liability against the appellant. Apart from the above, we also note that the issue has been clearly covered by the Board circular dated 01/11/1996 and the decision of Hon'ble Madras High Court in **Adwise Advertising Pvt. Ltd.** (supra) discussed earlier in this order. As such, the appellant will succeed in the appeal with reference to the demand of service tax.

9. Regarding denial of Cenvat credit on the ground that the invoices were addressed to unregistered premises of the appellant, we note that there is no dispute regarding eligibility of input service for availability of credit to the appellant. The denial of credit is only with reference to address in the document. We find in various decisions, this Tribunal held that the credit cannot be denied on this reason. Reference can be made to the decision in **Manipal Advertising Services Pvt. Ltd.** (supra). We also note that in the appellant's own case on the same issue, the Original Authority for the later period held that denial of credit cannot be justified on this ground, vide order dated 21/07/2016.

10. In view of the discussion, as above, we find the impugned order is not legally sustainable. Accordingly, we set aside the same and allow the appeals.

(Order pronounced in open court on 26/04/2017.)

(S.K. Mohanty)
Member (Judicial)

(B. Ravichandran)
Member (Technical)

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