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

Service Tax Appeal No. 60531 of 2013

[Arising out of Order-in-Original No. 116/2013 dated 29.08.2013 passed by the Commissioner of Central Excise, Jaipur]

M/s. Kohinoor Publicity **Appellant**

Vs.

Commissioner of Central Excise **Respondent**
Jaipur I

Appearance:
Shri Kumar Vikaram, Advocate for the Appellants
Shri Ranjan Khanna, DR for the Respondent

<u>CORAM</u>:
Hon'ble Dr. D M Misra, Member (Judicial)
Hon'ble Mr. Ashok K Arya, Member (Technical)

Date of Hearing / Decision: 19.06.2017

FINAL ORDER NO. 55547 /2017

<u>Per: Ashok K Arya:</u>

M/s. Kohinoor Publicity is in appeal against the Order-in - Appeal No. 116/2013 dated 29.8.13 passed by Commissioner (Appeals) wherein *inter alia* demand of service tax amounting to Rs.12,03,614/- along with interest and equivalent penalty has been confirmed.

2. The brief facts are that:-

(i) the appellant is rendering taxable service wherein advertisements appear in various print media, thus providing advertisement services. The assessee for the period of 2005-2006 to 2009-2010 received certain consideration against the said advertisement service. Based on intelligence, the department started investigation and issued show cause notice (SCN) dated 20.10.2010 demanding Service tax of Rs.12,03,614/- along with interest.

(ii) The show cause notice was adjudicated by the Additional Commissioner vide order in original No. 80/2011 dated 30.11.2011 inter alia confirming the demand along with interest and imposition of equivalent penalty.

(iii) The appellant went in appeal before Commissioner (Appeals) who rejected their appeal and sustained the order in original. Therefore, appellant is in appeal before the Tribunal.

3. Both the sides represented by learned Counsels, Shri Kumar Vikram, for the appellant and Shri Ranjan Khanna, for the Revenue have been heard.

4. The main pleading of the appellant is that service tax is payable on the actual amount received by them. The appellant states that they did receive 15% of the commission from news papers and print media for providing service to advertisers, and they passed 10% to 12% from the commission received to their advertisers / customers and retained only 3% to 5% which is their consideration, and on the said consideration only service tax is leviable.

4.1 However, the appellant has not provided any evidence at any stage of having retained only 3% to 5% of 15% commission given to them by print media and news paper. Unless the appellant provides evidence that their consideration is only 3% to 5% of 15% commission received, their stand that service tax is payable only on 3% to 5% of the commission retained by them cannot be accepted.

4.2. For similar facts, the Tribunal in the case of ***CST, Ahmedabad vs. Poornima Advertising & Promotion Pvt. Ltd. [2010 (20) STR 107 (Tri-Ahmd)]*** has held that Service tax liability arises only on the actual amount collected by the appellants and not 'on the full discount received by them from the advertising agency, from news paper or the media'. The Tribunal in the said case observed as under:

> ***"5.*** *Another point which Commissioner (Appeals) has decided in favour of the appellants is that the Service tax liability arises only on the actual amount collected by the appellants and not on the full discount received by them from advertising agency, from the newspaper or the media. The very same issue had come up before the Tribunal in the case of Mccann Erickson India Pvt. Ltd. reported in 2008 (10) S.T.R. 365 (Tri.-Bang.) and also Euro RSCH Advertising Ltd. v. C.C.S.T., Bangalore reported in 2007 (7) S.T.R. 277 (Tri. -Bang.). In both the cases it was held that*

Service tax is payable only on the actual amount received by the service provider.”

4.3. As per theratio of the Tribunal’s decision in the case of ***Poornima Advertising & Promotion Pvt. Ltd.*** (supra), the service tax liability is only on the amount of 3% to 5% which is retained by the appellant. However, the fact of retaining 3% to 5% has not so far been proved by any evidence by the appellant. In this regard, we give one more opportunity to the appellant to provide evidence substantiating the fact that they retained only 3% to 5% of commission received from the newspaper agency or printing media. Once it is substantiated by documentary evidence, the service tax will be charged only on the retained amount of 3% to 5%, which is actual consideration for advertisement services provided by the appellant.

4.4. Consequently, the impugned order is set aside and the matter is remanded to the adjudicating authority, who shall provide opportunity of personal hearing and submission of the related documents to the appellant and in the light of above findings decide the matter afresh.

5. In the result, the appeal is allowed by way of remand in above terms.

(Pronounced in the open Court)

(D M Misra)
Member(Judicial)

(Ashok K Arya)
Member (Technical)

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