

**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 : 26/07/2017.
DATE OF DECISION : 24/08/2017.

Service Tax Appeal No. 1764 of 2010

[Arising out of the Order-in-Original No. 27-ST/PKJ/CCE/ADJ/2010 dated 17/09/2010 passed by The Commissioner of Central Excise & Service Tax (Adjn.), New Delhi.]

M/s Impact Communications

Appellant

Versus

CST, New Delhi

Respondent

Appearance

Shri R. Santhanam, Advocate – for the appellant.

Ms. Neha Garg, 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. 56137/2017 Dated : 24/08/2017

Per. B. Ravichandran :-

The appeal is against order dated 17/09/2010 of Commissioner (Adjudication), Central Excise, New Delhi. The appellants are engaged in providing taxable service and were registered with the Department for payment of service tax. Upon auditing the accounts of the appellant, the Revenue

entertained a view that the appellants did not correctly discharge service tax liability during the period October 2003 to March 2007. Proceedings initiated against the appellant by way of show cause notice concluded in the issue of present impugned order. The impugned order held that the appellants provided event management service to various clients and received considerations therefor. He disallowed the claim of the appellant to calculate the taxable value by considering various receipts as reimbursable expenses. The appellants also claimed that their services are not liable to taxed under event management, but under business auxiliary/support/exhibition service. It was claimed that by mistake the appellants were registered under event management service, in September 2002. Their service should have been taxed under business exhibition service/BSS/BAS, based on the nature of contract entered into by them. The Original Authority confirmed service tax liability of Rs. 1,22,57,631/- on the appellant and imposed equal amount of penalty under Section 78 of the Finance Act, 1994.

2. The learned Counsel appearing on behalf of the appellant submitted that irrespective of classification of service rendered by them, the tax liability cannot include the consideration received by them towards reimbursable expenditure incurred for the clients. During the course of provision of various types of services the appellants procured

and supplied goods and materials to the clients in terms of contract. As per the decision of Hon'ble Delhi High Court in **Intercontinental Consultants and Technocrafts Pvt. Ltd. vs. Union of India – 2013 (229) S.T.R. 9 (Del.)** and Hon'ble Madras High Court in **Sangamitra Services Agencies vs. Union of India – 2014 (33) S.T.R. 137 (Mad.)** and various decisions of the Tribunal, such reimbursable expenses cannot be treated as part of taxable value. The learned Counsel also relied on various other decided cases on similar lines. The demand was contested on the question of limitation also. The show cause notice dated 24/03/2009 covering the period from October 2003 to March 2009 is not sustainable as there is no case for invoking extended period against the appellant. The demand now raised is based on records and documents maintained by the appellant and various contracts entered into with the clients. Regarding the reimbursable expenses, the appellant acted in a bonafide manner and accordingly there can be no question of penalty in this case.

3. The learned AR supported the findings of the lower authority. She submitted that a perusal of various contracts entered into by the appellant will clearly reveal the nature of activities undertaken by them. There is no reimbursable expenditure on actual basis, identified for supply of any goods or materials or procurement of services for and on

behalf of the client. The case laws relied upon by the appellant are not applicable to the facts of the present case.

4. We have heard both the sides and perused the appeal records. The main thrust of the appellant is regarding valuation of taxable service rendered by them. They have been paying service tax only on "agency fee" or "commission" collected from the client. They have entered into various types of contracts with clients like Hindustan Lever Ltd., Eicher Tractors Ltd., Escorts Ltd., Godrej Sara Lee Ltd., Maruti Suzuki Ltd. and Emami Ltd. We have perused these contracts. We note that the nature of services are such the appellants are managing participation of clients in certain mela, fairs, promotional activities of merchandise, managing events with a aim to propogate the products of the clients etc. We note that the Original Authority examined, in detail, the scope of work orders before arriving at his conclusion. Regarding the nature of service rendered by the appellant, the observations of the Original Authority are as below :-

"24.5 I find that in clarification vide F. No. B/1/2002-TRU dated 01/08/2002, it was clarified that if the event is organized in house and only services of certain contractors are obtained then no service tax will be payable as the event is organized/ management by the sponsors himself. I find that in the present case the event was not organized or managed by M/s Godrej SARA Lee Ltd. or M/s Maruti Udyog Ltd. They have outsourced this work of organizing and managing the even to M/s IC.

Similarly, the circular No. 68/17/2002-St dated 28/11/2003 is also not applicable in their case. This circular was issued in the context of a firm/person who was undertaking activities of organizing exhibitions and inviting trade and industries to participate. It was clarified that providing of space in addition to certain facilities like furniture, cabins, security, electricity etc. will not be consider as event management. It was clarified that such person who are providing only space with furniture etc. are not providing the service of event management. Here I find the M/s IC is not organizing the exhibition soliciting the participation of trade and industry. They have been hired by the sponsors like Godrej SARA Lee or MUL to manage the business event.

24.6 It was also contended that a person should undertaken all the activities of planning, promotion or organizing an event to attract the ST under the taxable category of event management service. I find that any services which constitute either planning or promotion or organizing or presentation would be taxable under this category. It is clear from the activities undertaken by M/s IC that they are organizing/presenting the business event and their activities are not restricted to just supply certain equipments or services to an event organizer. These events were also not organized by their clients. Their clients were only the sponsors of these events and the same was organized and executed by M/s IC. Thus, it is clear that the activities undertaken by M/s IC are covered under event management service as defined in clause (40) of Section 65 of the Act *ibid*.

24.7 M/s IC have relied upon the definition of event management given in Wikipedia and in

textbooks dealing with event management. It is seen that the Wikipedia/textbook definition for Event Management may refer to the complete event – from the planning to execution stage, however, for the ST purposes, in view of the definition of taxable category of 'event management' any of the activities in relation to planning or promotion or organizing and promotion is liable to ST under the category of Event Management. The case law cited by M/s IC in this regard are not relevant since the statute itself has defined the event management and the coverage of taxable activities has to be decided in the light of definition given under the Act.

24.8 In view of the above I hold that the activity undertaken by M/s IC are taxable under the category of Event Management Service”.

5. On careful consideration of the scope of various work orders, we are in agreement with the above findings of the Original Authority. As noted earlier that the main issue in the appeal is with reference to the claim of the appellant regarding exclusion of reimbursement expenses incurred by them. We note that for exclusion of reimbursement expenditure should be based on pre-arrangement and on actual basis without any mark up. The appellants should have incurred expenditure and got the same reimbursed on actual basis, with supporting document, from the clients. Perusal of various work orders indicate that no such arrangement exist in the present case. For example in the work order dated 07/02/2006 of Emami, the payments are indicated under different headings like complete stall fabrication,

manpower, printing glow sign, agency fee, service tax and finally total. We note this is nothing, but the break up of consideration and cannot be taken as agreement to reimburse any procurement of items or services for or on behalf of client on actual basis. Such break ups are as lump-sum amounts mainly to arrive at the overall gross consideration for the work order. We find no scope to consider any one of these components as reimbursable expenditure. The appellants are liable to service tax on the gross amount received. They cannot restrict their tax liability to only agency commission in view of the details given in the work orders examined by us. The case laws relied upon by appellant dealt with reimbursable cost. Here, we note there is no support to categorize any amount as reimbursable cost.

6. The demand is contested on the question of limitation. We have examined this aspect. A perusal of various work orders clearly shows that the appellants deliberately chose to discharge service tax only on the agency commission or fee which is a small portion of the gross amount. The claim for exclusion of other consideration on the ground that they are reimbursable expenditure is found not tenable. The reasons are recorded above. In such a situation, we find that the appellant's action of not paying service tax on the gross value and claiming bonafide belief is not acceptable. In fact, the Board vide clarification dated 01/08/2002 categorically clarified on the valuation in respect of event management service. On examination of the impugned order and the submissions of the appellant, we find no reason to

interfere with the findings recorded by the Original Authority.
Accordingly, we dismiss the appeal.

(Order pronounced in open court on 24/08/2017.)

(S.K. Mohanty)
Member (Judicial)

(B. Ravichandran)
Member (Technical)

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