

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL,
NEW DELHI, PRINCIPAL BENCH NEW DELHI

Date of Hearing:02.08.2017

Date of Decision:31.08.2017

Service Tax Appeals Nos.52881 and 52888/2014 (DB)

[Arising out of common Order-in-Original No.27-28/SRB/2014 dated 13.02.2014
passed by the Commissioner of Service Tax (Adjudication), New Delhi]

M/s. HT Media Ltd.

Appellants

Vs.

CST, New Delhi

Respondent

Appearance:

Rep by S/Shri S. Ganesh. Sr. Advocate with Ashok Dhingra and Ms.Smita Singh,
Advocates

Rep. by Shri Amresh Jain, DR for the respondent/Revenue.

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

Final Orders Nos.56358-56359/2017

Per B. Ravichandran:

The appeals are against common order dated 13.02.2014 of the Commissioner (Adjudication), Service Tax, New Delhi. The appellants are registered with the Department under various categories of Taxable Services. On completion of audit of the documents of the appellant in Jan. 2011, the Revenue entertained a view that the appellants did not discharge their service tax liability and interest liability, properly. Accordingly, proceedings were initiated first by issue of demand-cum-show cause notice dated 21.04.2011 covering period 2006-07 to 2009-10 and then, by another demand notice dated 7.9.2012 for the period 2011-2012. The demands were with reference to (a) Event Management Service, as recipient of such service from foreign service providers; (b) Internet Telecommunication Service; (c) Management Consultancy Service; (d) Business

Support Service; and (e) Interest on delayed payment of service tax in respect of services provided to associated enterprises.

2. These demands were contested by the appellants. The case was adjudicated. The Original Authority confirmed a total service tax liability of Rs.2,75,64,632/- along with interest liability of Rs.14,34,421/- in respect of demand notice dated 24.01.2011. Penalty of Rs.5,13,95,467/- under Section 78 and Rs.5,000/- under Section 77 of Finance Act, 1994 were imposed. A service tax liability of Rs.41,02,467/- was confirmed along with penalty of Rs.10,000/- under Section 77 and further penalty under Section 76 were imposed in respect of demand notice dated 7.9.2012.

3. In the present appeal, the demands were contested both on merit as well as on limitation except in respect of service tax on Internet Telecommunication Service, the tax liability on which is not contested. Ld. Sr. Counsel on behalf of the appellant elaborately submitted against the tax liability of the appellant in respect of each service. The appellant's submission may be summarized as below:-

(a) The appellants organized Annual Summit and invite prominent speakers from different walks of life to deliver speech. The appellant did not take assistance of any outside agency in selecting speakers. The appellants obtained the participation of certain prominent foreign leaders like Mr. Al Gore, Mr. Tony Blair, through their agents. The agents, Washington Speakers and Herry Walker Agency cannot be considered as "Event Managers" in terms of Section 65(41) involved in "Event Management" as per Section 65(40) and are not providing any taxable service under Section 65(105)(zu) of the Act. Reliance was placed on the circular dated 8.8.2002 of the CBEC. The agreements with the agents will bring out that the agents are not arranging the

speakers for the event management by the appellants. They are simply booking the speakers under authorization from such speakers. These agents cannot be called as “Event Managers”. They are not engaged in any planning, promotion organizing or presentation of such event. They did not assist the appellant, in any manner, with regard to organizing the summit event by the appellant. Ld. Counsel referred to various clauses of the agreements in support of his contention.

(b) The service tax liability confirmed under the category of Management Consultancy Service is not legally sustainable. The appellants had arrangement with M/s. H.T. Burda. In terms of the agreement, the appellants are providing project management service in relation to business of setting-up printing undertaking and commencement of production in the new facility at Greater Noida. M/s. H.T. Burda in addition to the above requirement had also requested the appellant to procure and pay for certain products/goods and services on its behalf, such as purchasing sufficient products/goods for its pre-press unit. It is mentioned in the agreement itself that while providing Project Management Services, the appellants shall also procure, as Pure Agents, the products/goods/services, from third parties on behalf and for use of M/s. H.T. Burda. The appellants fulfilled all the conditions of a “Pure Agent” in terms of Rule 5(2) of Service Tax Valuation Rules. As such, they are not liable to pay service tax on such consideration. The observation of the Commissioner in the adjudication order regarding condition (iii) under the said Rule 5(2) is erroneous and without appreciating the facts. It is clear that the recipient of service is liable to make payment to third party but he authorizes the service provider to make payment on his behalf. The facts in the present case, as evidenced from the terms of the agreement, clearly fulfill such conditions. The findings of the Original Authority are erroneous. Reliance was

placed on various decided cases in support of the said contention.

(c) Regarding liability of the appellant under the category “Business Support Service” , the ld. Counsel submitted that they have not provided any infrastructure support to various associated enterprises. As per the arrangement among the associated enterprises, the appellants incurred certain expenditure as a Nodal Company and thereafter the expenditure was shared with group companies. Such cost sharing arrangement among group companies is supported by debit notes and due accounting. There is no service rendered by the appellant. It is merely allocation of expenses out of common pool. When a service is procured from a third party and is paid by one group company and thereafter, such expenditure is shared proportionately between different group companies as per usage, it cannot be said that one group company is providing any service to another group company. As such, the demand on these grounds under the category of “BSS” is not sustainable.

(d) Regarding interest liability of the appellant with reference to taxable services provided to associated enterprises, ld. Counsel submitted that the appellants has rightly discharged the service tax liability during the relevant period covered in the first show cause notice. The Original Authority erred in holding that the demands were correctly made for the period from 6.6.2008 covering the period of tax payment from May, 2008 onwards. It is submitted that the amount, which are for the services rendered to associated enterprises, the credit or debit by book adjustment when the same is prior to the amendment carried out in the explanation cannot be made liable to any interest. That will be retrospective application of such amendment.

(e) The demand is substantially barred by limitation. The appellants were registered with the Department and filing regular service tax returns. The tax liability under the “Event Management Service” is on reverse charge basis, which is a subject matter of litigation till the matter is finally resolved by the decision of the Hon’ble Bombay High Court in **Indian National Shipowners Association Ltd.Vs. Union of India – 2009 (13) STR 235 (Bombay)**. Further, the receipt of the amounts as pure agent from M/s. H.T. Burda is clearly indicated in their ST-3 Returns. As such, there is no case for invoking allegation of suppression, fraud, etc. against the appellant. The Original Authority has incorrectly confirmed the demand for extended period as well as wrongly imposed penalties under Section 78 and 76 against the appellant.

4. Ld. AR supported the findings of the Commissioner. He submitted that to be covered under tax entry, “Event Management Service”, a person need not to undertake all the activities mentioned therein. The definition is wide enough to cover service provided in relation to planning, promotion, organizing or presentation of any arts, entertainment, business, sports or other events. The agents for prominent speakers are covered as ‘Event Managers’ and the liability on reverse charge basis will be on the appellant. Regarding tax liability of the appellant under “Management Consultancy Services”, it is submitted that the appellants have not fulfilled the conditions of a ‘pure agent’. The ld. AR supported the findings recorded by the Original Authority on merit as well as on limitation.

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

6. We consider the disputed issues one by one. First point for decision is the liability of the appellant to pay service tax on reverse charge basis under the

category of “Event Management Service”. The statutory provisions relevant to the present issue are as below:-

“Section 65(41) of the Finance Act defines ‘event manager’ as follows:-

“‘event manager’ means any person who is engaged in providing any service in relation to event management in any manner”

Section 65(40) of the Finance Act defines ‘event management’ as follows:-

“‘event management’ means any service provided in relation to planning, promotion, organizing or presentation of any arts, entertainment, business, sports, marriage or any other event and includes any consultation provided in this regard”.

Section 65(105)(zu) of the Finance Act defines taxable service as under:-

“any service provided or to be provided to any person, by an event manager in relation to event management”.

7. Admittedly, “Event Management” means a wide variety of service provided in relation to various types of events and includes any consultancy provided in this regard. The scope of statutory definition is very wide. Keeping this in view, we have examined the terms of agreement entered into by the appellant with M/s.The Harry Walker Agency, M/s.Washington Speakers Bureau. It is clear that the appellants are not having any transaction directly with the eminent speakers, who are to give speech in the Annul Summit organized by the appellant. Arranging such eminent speakers is one of the important ingredients of event management. In this aspect, the agents in foreign countries ensured the availability of persons to such event, for a fee. Such fee is a total gross amount to be paid by the appellant to the agent. The claim of the appellant is that such agents are acting as representative of

the speaker and as such should be considered as one of the same, with no separate role in between. We are not in agreement with such proposition. It is clear that the agency, which are arranging for prominent speakers, have their own arrangement with such speakers. The details of the same are not revealed. The appellants get the services of such speakers through the agents. In such arrangement, we find that the activities of the foreign agents is covered by the statutory scope of event manager. As correctly contended by the Revenue, it is not necessary an event manager should undertake all the activities mentioned in the statutory definition for a tax liability. We are in agreement with the following observations of the Original Authority:-

“I find that all the limbs of the definition of Event Management Service are present in the subject case viz. any service (activity of booking of foreign based eminent personalities) to any person (the noticee in the present case) by an event manager (the overseas agent) in relation to event management(planning in the present case with regard to visit of the foreign based eminent personalities in the Summit).”

As such, the arguments of the appellant against such tax levy is not sustainable.

9. Regarding “Management Consultancy Services” provided to M/s.H.T. Burda, the demand was contested on the ground that they have acted as pure agent to arrange on actual cost basis, goods and services for the clients. We note that the claim of the appellant was rejected by the Original Authority relying on the conditions no.(iii) under Rule 5(2) of the Valuation Rules. The said condition states that the recipient of service is liable to make payment directly to the third party. The Original Authority held that M/s.H.T. Burda are not making any payment to third party and hence, the appellant cannot be regarded as ‘pure agent’.

We find that the Original Authority fell in error in not reading together all the conditions mentioned under sub-rule (2) of Rule 5. It is clear that to be “Pure Agent”, that the provider of service has to make payment to the third party on behalf of the principal (service recipient) and such arrangement should be on actual basis with prior knowledge, in terms of the agreement. Conditions No.(iii) read with (iv) will make it clear that if the appellant is making payments as authorized by the service recipient on actual basis then such expenses shall not form part of the taxable value. On perusal of the documents submitted by the appellant in support of their claim for consideration as Pure Agent and also upon perusal of the agreement dated 1.8.2008 between these two parties, we find that the impugned order is not sustainable in rejecting the claim of the appellant for consideration as pure agents. Clause 2.2 of the said agreement is very specific and categorical regarding authorization by M/s. H.T. Burda for payment to third party with prior approval and re-imburement of such payments on actual basis. Accordingly, we allow the claim of the appellants against the tax liability on these grounds.

10. Service tax liability has also been confirmed against the appellant under the category “Business Support Service” as they have provided infrastructure support to various associated enterprises. The Original Authority held that as per the balance sheet, certain amounts were shown as re-imburement from group companies for expenditure incurred on their behalf. The Original Authority held that such amount received will be liable to be taxed under the category of “BSS”. The appellants strongly contested the findings. We note that the appellant’s claim is that as a nodal group company, they have incurred certain expenses in common pool account and thereafter, proportionately, the said expenditure was shared with other group companies. Receipt of this account cannot be taxed under “BSS”.

We are in agreement with the submission of the appellant. The appellants did not provide any infrastructure support service using any of their infrastructure or providing any service to other group companies. The infrastructure facilities were commonly shared and the third party was paid by the Nodal Company (appellant). Thereafter the said expenditure was apportioned with other group companies, who availed the same service. We note that the appellants and other group companies are service recipient though the considerations were initially paid by the appellant and proportionately thereafter, distributed to other group companies. We find there is no sustainable case of tax liability against the appellant in such arrangement. In this connection, we rely on the decision of the Tribunal in **Reliance ADA Group Pvt. Ltd.- 2016(43) STR 372 (Tribunal-Mumbai)**. The reliance placed by the Original Authority on the decision of the **Kotex Security Ltd. – 2013 (32) STR 705 (Tribunal-Mumbai)** is not relevant to the facts of the present case. The Original Authority instead of examining the actual nature of the infrastructure sharing arrangement by the appellant group company, relied on the said decision to confirm the service tax liability. We find merit in the contention of the appellant on this issue.

11. The final point for decision is the liability of the appellant to pay interest on delayed payment of service tax in respect of services provided to associated enterprises. The Original Authority held that in terms of Section 67 read with Rule 6 of Service Tax Rules along with notification no.19/08-ST dated 10.05.2008, the appellants is liable for interest for the period 10.05.2008 to 31.03.2011 for delayed payment of service tax. In other words, he held that the amendment carried out in Explanation (c) under Section 67 (w.e.f. 10.05.2008) is applicable to the appellants' case, since they did not discharge due service tax liability for each

relevant month when entries were made in the books with reference to services rendered for associated companies. We note that the appellants argued that such explanation can have only prospective effect and should cover only such book entries or payments made after 10.05.2008. The said explanation is having effect of an amendment and shall have only prospective effect. We note that admittedly the appellants made entries of taxable considerations in their books of accounts. These entries relate to the period prior to the date of the said amendment. However, the appellants discharged the service tax liability much belatedly in Jan. 2009 and March, 2010 and March, 2011. These tax payments were with reference to entries made prior to 10.05.2008. The Original Authority confirmed the interest w.e.f. that date. The Board vide Circular dated 29.02.2008 clarified that for transaction between associated enterprise any credit/debit in the books of account shall be considered for tax liability in case of provision of taxable service. Following the ratio in the decisions of Tribunal in **Sify Technologies – 2011(21) STR 252 (Tribunal-Chennai)** and **Gecas Services India Pvt. Ltd. – 2014 (36) STR 556 (Tribunal-Delhi)**, we find that for entries made prior to 10.05.2008, no interest liability will arise.

12. The demands were also contested on the issue of time bar. We note that the tax liability under the category of “Event Management Service” is confirmed against the appellant on reverse charge basis. The concept of reverse charge was much debated and litigated. Considering the interpretation involved and the applicability of the reverse charge only w.e.f. the date of introduction of Section 66(A), as held by the Hon’ble Delhi High Court in **Indian National Shipowners Association Ltd. (supra)**, We find that the appellants have force in their arguments for limitation. The Hon’ble Delhi High Court decided the case in 2009.

Thereafter, the Board vide their letter dated 26.09.2011, after dismissal of all the appeals preferred by the department, before the Hon'ble Supreme Court, recalled the circular dated 30.06.2010. The service tax liability was held to be enforceable on reverse charge basis only w.e.f. 18.04.2006. In such situation, it will not be correct to allege willful mis-statement, suppression or fraud against the appellant to demand tax for the extended period. The demand for normal period in terms of Section 73 can only be sustained. For the same reason, no penalty can also be imposed on the appellant with reference to such demand.

13. In view of the above discussion and analysis, we hold that the appellants are liable to pay service tax under the category of "Event Management Service" for the period covered with the normal limitation. The demand of service tax in respect of Management Consultancy Service and Business Support Service and interest liability for entries with reference to associated enterprise are found not sustainable.

14. The appeals are accordingly disposed of.

[Order pronounced on 31.08.2017.]

(S.K. Mohanty)
Member (Judicial)

(B. Ravichandran)
Member (Technical)

Ckp.