

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

Date of Hearing: 22.09.2017

Date of Decision: 27.10.2017

Service Tax Appeal No.327/2011 (DB)

[Arising out of Order-in-Original No.22/Commr/ST/ADJ/BPL-I/2010 dated 26.11.2010 passed by the Commissioner of Central Excise, Bhopal]

M/s.Smriti Television Media & Films (P) Ltd.

Appellant

Vs.

CCE, Bhopal

Respondent

Appearance:

Rep. by Shri B.L. Narsimhan, Advocate & Shri Karan Sachdev, Advocate
for the appellant.

Rep. by Shri Amresh Jain, AR for the respondent.

Coram: Hon'ble Mr.S.K. Mohanty, Member (Judicial)

Hon'ble Mr. B. Ravichandran, Member (Technical)

Final Order No.57434/2017

Per B.Ravichandran:

The appeal is against order dated 26.11.2010 of Commissioner of Central Excise, Bhopal. The appellants are engaged in activities like making advertisements for clients and sale of time slots in Doordarshan, managing street shows, public display and distribution of advertising materials, leaflets, etc. The dispute in the present appeal relates to the period 1.4.2003 to 31.03.2007 with reference to service tax liability of the appellant under "Business Auxiliary Service", "sale of space or time", "advertising agency service" and "programme producer service". The Original Authority confirmed a service tax liability of Rs.80,63,100/- and also denied cenvat credit of Rs.7,83,287/- on the ground that

the said credit was not available to the appellants in terms of Cenvat Credit Rules, 2004. Penalties were also imposed under Section 78 and Rule 15(3) of Cenvat Credit Rules, 2004.

2. Ld. Counsel for the appellant contested the confirmation of service tax liability against the appellant. He submitted on the following lines:-

(a) They have sold banners and rented out hoardings. This cannot be taxed under “Business Auxiliary Service”. They have also undertaken certain activities for Chief Medical Officer, Ujjain and also State Health Resource Centre, Chattisgarh. These are with reference to public health and there is no promotion of any service provided by another person. The services rendered by the Health Authorities of the Government cannot be considered as a taxable activity. This is part of their public duty and the appellants assisted in the same. Small amount of service tax of Rs.2,693/- is with reference to broadcast of jingle on All India Radio for Yamaha Motors India Pvt. Ltd., which cannot be taxed under “Business Auxiliary Service”.

(b) Further, it was contended that on Rural Marketing Activities, they have paid service tax of Rs.5,85,832/- on actual receipt basis and this has been certified by the Chartered Accountant. The impugned order confirmed service tax of Rs.9,96,554/- even on amounts, which were not received during the relevant period.

(c) It is also contended that mere painting of walls is not liable to be taxed.

(d) For the period 1.4.2006 to 31.03.2007, a demand of Rs.17,44,951/- was raised and confirmed by the Original Authority.

No details have been provided regarding the basis of such calculation and demand.

(e) Ld. Counsel also submitted that the appellants paid service tax on sale of time or space service for the period 1.5.2006 to 31.03.2007 on actual receipt basis. For the service rendered prior to 1.5.2006 when there is no tax entry, the demand is not sustainable. A demand of Rs.3,08,015/- is not sustainable on this ground.

(f) The appellants have undertaken various activities of film dubbing, translating and recording songs, producing audio jingles. These are not liable to be taxed under advertising agency service.

(g) The demand of service tax for agency commission is not sustainable. The demand was proposed under BAS but confirmed under Advertising Agency Service.

(h) With reference to demand under programme producer service, ld. Counsel submitted that the appellants have paid service tax on actual receipt basis and produced documentary evidence in this regard. The cenvat credit is also correctly availed by the appellants on the input service.

4. Ld.AR reiterated the findings of the Original Authority and submitted that the documents submitted by the appellants have been examined and commented upon by the Original Authority. The appellants are now making certain issues with reference to factual details and also on actual receipt of taxable consideration. This requires cross verification.

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

We consider the tax liability of the appellant under “Business Auxiliary Service” first. The Original Authority confirmed service tax liability on

considerations, which are received by the appellant for sale of banners and renting out of hoarding materials. We have perused the sale invoices in this regard. The transaction is one of simple sale or lease. There is no service element in the said transaction. The Original Authority recorded that the contractual arrangement with the State Government indicates that the appellants are to carry out road show on Polio Public Education Campaign. We find that the said contractual arrangement is not connected to the sale transaction of banners made to M/s. Prabhakar Advertising Agency, Bhopal. The invoice clearly shows that the consideration is for sale of banners. In fact, some of the invoices also indicate sales tax payment. As such, the summary finding of the Original Authority regarding tax liability on such sale transaction is not sustainable.

6. Similarly, there can be no tax liability on the services rendered by the appellant to the Health Authorities or State Government. The State Government is undertaking programmes for Public Health and Awareness Campaign for Polio Eradication Show. This is a public duty and part of essential State function. There is no service provider service recipient relationship in such activity carried out by the Public Health Authorities as part of the Government function. There is no payment or arrangement with individual service recipient for any service. There can be no promotion of such service by the appellant to attract tax liability under “Business Auxiliary Service”. We hold that the service tax liability cannot be sustained on such activity carried out by the appellant with reference to arrangement with Public Health Authorities of the State.

7. We also note that the Original Authority did not consider the claim of the appellant to calculate the tax liability wherever applicable based on the actual receipt of the considerations during the relevant period. We note that the Original Authority records that it is not the case of the assessee that they have not received the amount at all till the date of impugned order. Hence full billed amount was taken. We find that such reasoning is not legally sustainable. The tax demand was raised for a particular period. The appellants are contesting the demand due to non-recipient of the consideration during the said period. Accordingly, the tax liability has to be necessarily arrived at based on the actual receipt during the relevant time.

8. We also note that the demand of Rs.17,44,951/- was made for the period 1.4.2006 to 31.03.2007. The appellants strongly pleaded that they were not provided any basis or break up details in support of the said quantification of the tax liability. We find force in the submissions of the appellants. Though the calculation might have been based on the documents submitted by the appellant, the basis of quantification with reference to specific invoices are to be made known to the appellant so that they can explain their side of the case. It is also seen that in respect of the sale of space or time, for the services rendered prior to 1.5.2006, also the demands have been made. This is not sustainable.

9. We note that the above discussion with reference to infirmities in factual analysis and application of legal principles, renders the impugned order unsustainable. Accordingly, we are constrained to set aside the same and remand the matter back to the Original Authority for a fresh decision keeping in view the above observation. Adequate opportunity shall be provided to the appellant to

submit their side of the case before a decision is taken afresh. All the issues are kept open for a fresh decision. The appeal is allowed by way of remand.

[Order pronounced on 27.10.2017]

(S.K. Mohanty)
Member(Judicial)

(B. Ravichandran)
Member (Technical)

Ckp.