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. IV

DATE OF HEARING: 21/12/2017

Appeal No. ST/56878/2013 - [SM]
[Arising out of Order-in-Appeal No. APPL/ JPR-I/ST/JP/248/X/2012 dated 18/02/2013 passed by the Commissioner (Appeals) of Central Excise, Jaipur-I]

Apex Advertising Appellant

Versus

CCE & ST, Jaipur-I Respondents

Appearance
Shri Krishna Mohan, Advocate for the appellant.
Shri K. Poddar, AR for the Respondent.

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

Final Order No. 58755/2017

Per. S.K. Mohanty :-

1. Brief facts of the case are that the appellant is registered with Service Tax Department under the taxable category of Advertising Service, as defined under Section 65(2) of the Finance Act, 1994. The appellant is a sub-contractor operating in unison with M/s Rajasthan Samwad (Advertising Agency of Rajasthan State Govt.), upon a principal contract between the Department of Information and Public Relation (DIPR), Ministry of Information, State of Rajasthan and Rajasthan Samwad.

2. During the period i.e. Oct 2006 to Mar, 2010, M/s Rajasthan Samwad invoiced DIPR for certain services provided and recovered the consideration along with the invoice. Since the appellant was the joint venture partner/sub-contractor, the portion of the

consideration was given to the appellant. Rajasthan Samwad paid Service Tax on the entirety of the consideration received, including the portion passed on to the appellant. Under such circumstances, the appellant did not pay further Service Tax on the amount received from Rajasthan Samwad. For non-payment of Service Tax, the Department proceeded against the appellant for recovery of the Service Tax liability. The show cause notice dated 01/06/2011 issued to the appellant was adjudicated vide order dated 04/06/2012, wherein the proposed demand for recovery was dropped. Against the adjudication order, Revenue has filed appeal before the Ld. Commissioner (Appeal), which was disposed of. Vide the impugned order dated 19/02/2013, holding that the appellant is liable to pay Service Tax, even if the tax amount has already been discharged by the main advertiser, M/s Rajasthan Samwad. Feeling aggrieved with the impugned order, the appellant has preferred this appeal before the Tribunal.

3. The Ld. Advocate appearing for the appellant submits that for the advertising service provided by the appellant, the main advertiser who assigned the work to the appellant, had discharged the Service Tax liability, and accordingly, there was no necessity of paying tax by the appellant again. To support such stand, the Ld. Advocate has relied on the decision of Larger Bench of this Tribunal in the case of ***Vijay Sharma Co. V/s CCE, Chandigarh, 2010 (20) STR 309 (Tri. LB)*** and ***Lone Star Engineers V/s CCE, Panchkula, 2017 (47) STR 133 (Tri. Chan.)***

4. On the other hand, the Ld. DR appearing for the Revenue reiterates the findings recorded in the impugned order and further submits that since the appellant provided the taxable service, it is liable to pay the tax on such service. To support the impugned order, the Ld. Advocate has relied on the decision of this Tribunal in the case of ***Safe & Sure Marine Services Pvt. Ltd. V/s CST, Mumbai 2012 (28) STR 30 (Tri.-Mumbai).***

5. Heard both sides and perused the records.

6. The fact is not under dispute that Service Tax attributable to advertising service provided by the appellant was discharged by the main advertiser, M/s Rajasthan Samwad. Such fact has been discussed by the Adjudicating Authority vide order dated 4/6/2012. The relevant paragraphs in the said order are extracted herein below:-

> *4.3 I find that assessee has submitted a letter in his defence during personal Hearing bearing No. Sr./ Samwad/424 dated 15.07.2011, received from the Rajasthan Samwad and addressed to M/s Apex Advertising. In the said letter Rajasthan Samwad and addressed to M/s Apex Advertising. In the said letter Rajasthan Samwad declared that Service Tax had been paid to the Service Tax department on the entire amount of 15% commission received from departments/local bodies/organizations for the period 1st October, 2006 to 31st March, 2010. Rajasthan Samwad further declare in the said letter that Apex advertising had been paid their job charges from the 15% commission amount.*
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> *4.4 Thus, I find that M/s Apex Advertising is as per agreement with the Rajasthan Samwad, a Government advertising agency. Rajasthan Samwad received the 15% commission from the departments/local bodies/organizations for publishing their advertisement and give the commission share to the assessee as per the said agreement. Rajasthan Samwad already paid the Service Tax to the Service Tax department on the entire amount of 15% commission. Under the Finance Act, 1994, it is the activity which is subjected to Service Tax and in the instant case, the Service Tax has been paid on the amount which was receivable by the agency, entrusted with job of advertising the said material. Any further levy of tax at the end of the noticee*

would amount to double taxation which may not be permissible under the law.

7. It is evident from the above observations of the Adjudicating Authority that the service Tax in respect of the services provided by the appellant had already been discharged by the main advertiser. Hence, it is not the case of non-payment of tax by the appellant for providing the taxable service. I find that the Larger Bench of this Tribunal in the case of Vijay Sharma and Company (supra) and the Chandigarh Bench of the Tribunal in the case of Lone Star Engineers (supra) have held that the payment of main contractor on behalf of the appellant shall be treated as payment made by the appellant. The decision of this Tribunal in the case of Safe & Sure Marine Services Pvt. Ltd. (supra) relied on by the Ld. DR is distinguishable from the facts of the present case in as much as the Tribunal has not referred to the Larger Bench decision in the case of Vijay Sharma and Co., while taking a contrary view. Therefore, reliance cannot be placed on the decision of Safe & Sure Marine Services Pvt. Ltd. (Supra) to take a different stand.

8. In view of above I do not find any merits in the impugned order. Accordingly, after setting aside the same, I allow the appeal in favour of the appellant.

(Order dictated and pronounced in open court.)

S.K.Mohanty
Member (Judicial)

Rekha