CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
HYDERABAD

REGIONAL BENCH

Service Tax Appeal No. 748 of 2012

(Arising out of Order-in-Original No. 54/2011 Adjn (Commr)(ST) 23.12.2011 passed by Commissioner of Customs, Central Excise & Service Tax Hyderabad-IV)

M/s Social Media India Ltd **...Appellant**
D.No. 8-2-334, 1st Floor,
Road No. 5
Banjara Hills, Hyderabad-500 034

Verses

The Commissioner of Customs **...Respondent**
Central Excise & Service Tax
Hyderabad-IV Commissionerate
Posnett Bhavan, Tilak Road,
Hyderabad-500 001

APPEARANCE:
Mr Venkata Prasad, C.A. for the appellant
Mr V.R. Pavan Kumar, A.R. for the Respondent

CORAM:
HON'BLE MR R. MURALIDHAR, MEMBER(JUDICIAL)
HON'BLE MR A.K. JYOTISHI, MEMBER(TECHNICAL)

FINAL ORDER NO.30142 /2023

Date of Hearing: 06.06.2023

PER R. MURALIDHAR

The appellant has been providing services to Govt of Andhra Pradesh under a program called Integrated Mobile Publicity in Assembly Constituencies (IMPACT). The appellant was carrying an impression that they are not required to pay any service tax on this service since the services are being rendered to Govt of Andhra Pradesh. Hence, did not pay any Service Tax. The Department issued show-cause notice on 04.03.2011 by invoking the extended period provisions and demanded the service tax for the period 2007-2008 to 2008-09 amounting to Rs 5,48,06,153/-. The allegation of the department was that appellant was providing advertisement services and no Service Tax was discharged by the appellant during the period under dispute. After due process, the Adjudicating Authority confirmed the demand. Being agitated by the impugned Order-in-Original the appellant is before the Tribunal.

2. The learned counsel appearing on behalf of the appellant submits that the service provided by them would fall under the category of 'Business Exhibition Service' and since this service has been rendered to Govt of Andhra Pradesh, who are not into any business activity, no Service Tax is liable to be paid by them.

3. He further submits that from the beginning, they have been holding the view that no Service Tax is liable to be paid on the service rendered to the Govt of A.P. This being so, one AG's Audit (CERA) was conducted in July 2017. The Audit Team took the view that the service rendered by them would fall under the category of "Public Relations Management Service." Based on this view of the AG's Audit, the Dy Commissioner Service Tax vide Letter C.No. IV/16/763/2009-ST dated 05.07.2009 issued a letter stating that as per the facts recorded by AG's Audit, it has come to the knowledge that Service Tax of Rs 4.14 crores for the services rendered to IPRD, Govt of AP during 2008-09, is liable to be paid under the category of 'Public Relation Management Service', which has come into effect from 01.05.2006. This letter also asked them to pay Service Tax along with interest and report compliance immediately. Before this, on the same issue, the Superintendent of Service Tax vide Letter C.No. IV/16/763/2009-ST dated 01.07.2009 issued the letter stating that AG's Audit has pointed out that Service Tax of Rs 4.14 crores was not paid for the services rendered to IPRD and directed them to file various documents immediately. In response to this letter, the appellant has filed a letter dated 02.07.2009 giving their comments on various points raised in the letter.

4. He further submits that in respect of the same work of IMPACT, one more party Walia & Co of Delhi were also awarded the contract by the Govt of Andhra Pradesh. In case of this appellant, the Department initiated proceedings against them in New Delhi on the ground that they have provided the service of 'Public Relation Services.' At the adjudication level, Order-in-Original No. 44/GB/2011 dated 28.11.2011 was passed wherein the Adjudicating Authority had dropped the proceedings. Being agitated by this Order-in-Original, Department had filed an appeal before CESTAT Delhi. The Hon'ble Tribunal in this case as reported at CESTAT Delhi Vs Walia & Co

[2017(3)GSTL 408 (Tri-Del)] has held that the services rendered by Walia & Co would fall under the category of 'Public Relation Service' only and accordingly, the impugned Order-in-Original was set aside and the Department's Appeal was allowed.

5. In view of these facts, it gets clarified that there was no attempt on the part of the appellant to suppress any facts from the Department with an intent to evade the payment of Service Tax. The letter issued by the Service Tax Department Hyderabad in the month of July 2009 would clarify that the Department was also carrying the impression that services rendered by the appellant would fall under the category of "Public Relation Services". Even after gathering all the data in July 2009 itself, the Show-Cause Notice was issued only on 04.03.2011 after nearly more than 1.5 years, taking a stand that the appellant has rendered the service of Advertising Services. The above facts clarify that the Department itself had different interpretation for classification of the services rendered by the appellant. In July 2009, the department has taken a stand that the service would fall under the category of 'Public Relation Services' and this was based on the audit conducted of CAG Audit Team. Subsequently in 2011, the department has taken a stand that demand would fall under the category of 'Advertising Services'. The Department in the case of Walia &Co has taken the same stand as that of the CAG and proceeded to recover the amounts under the category of 'Public Relation Services.' This being so, when different interpretations have been given for the same service by different wings of the Revenue Department, he submits that the appellant cannot be fastened with the allegation of suppression with an intent to evade the Service Tax payment. Accordingly he submits that the demand for extended period is liable to be set aside on account of limitation also.

6. The learned AR submits that the services rendered by the appellants would fall under the category of 'Advertising' only as can be seen from the definition of Advertising Services in terms of Section 65 of the Finance Act 1994. Therefore, he says that appellant's submission that the services rendered by them would fall under the category of Business Exhibition Services has no legs to stand since the facts prove very clearly that the service would be classified under Advertisement Services only. Therefore on

merits, he reiterates the findings of the Adjudicating Authority and prays that appeal is required to be dismissed on merits.

7. Coming to the point raised by the appellant on account of limitation, the learned AR submits that the Department had to undertake detailed investigation and call for various documents which were being given by the appellant in piecemeal basis. Therefore Show-Cause Notice could be issued only in 2011. The fact remains that appellant has not paid the Service Tax though there was a clause in the Agreement stating that the amount payable by the Govt of A.P. was inclusive of Service Tax. This shows that the appellant has intentionally suppressed the facts and has not paid the service tax. Therefore he submits their pleading on account of limitation is liable to rejected.

8. Heard both sides and perused the documents. After going through the facts of the case, it emerges that in July 2009 CAG Audit has taken a view that service would fall under the category of 'Public Relation Services'. Keeping faith on this interpretation of the CAG, the Service Tax Department has raised the demand for more than Rs 4 crores wide their letter dated 15.07.2009. They have also raised the issue vide letter dated 01.07.2009 based on the CAG Audit and called for all the documents to be submitted. Appellants have replied on 02.07.2009 making their stand clear. The Show-Cause Notice fails to clarify as to what took them more than 1.5 years to issue the Show-Cause notice on 04.03.2011. In the Show-Cause Notice there is absolutely no mention of any earlier demand raised by the Department on 15.07.2009. The Show-Cause notice also does not specify as to what made the Department change its mind from classifying the service as Advertisement Services when CAG Audit has pointed out that the service would fall under the category of 'Public Relations Management Services'. On an identical issue in the case of another party Walia & Co who was also awarded the contract by Govt of A.P. in respect of the same program, the Department has proceeded against them at Delhi on the ground that they were rendering the service of 'Public Relations Management' service which in fact has been confirmed by the Delhi Tribunal.

10. Keeping these facts in view, we are not in a position to agree with the Department that there is a possibility of any suppression on the part of the appellant. From the factual matrix cited above, it is clear that the

matter of classification of the service is purely a matter of interpretation. In such a case demand for extended period does not sustain.

11. Accordingly, we hold that the confirmed demand for the extended period is liable to be set aside. The appeal is allowed to this extent.

(order pronounced and dictated in the open Court)

(R. MURALIDHAR)
MEMBER(JUDICIAL)

(A.K. JYOTISHI)
MEMBER (TECHNICAL)

Neela Reddy