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ST/757/2009, ST/1544/2010, ST/27783/2013
ST/30547/2016 & ST/30612 & 30622/2017

**CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH AT HYDERABAD**

Division Bench

Court – I

Service Tax Appeal No. 757 of 2009

(Arising out of Order-in-Appeal No. 28/2009 (H-II) ST dt.20.05.2009 passed by
Commissioner of Customs, Central Excise & Service Tax, Hyderabad)

Varadhi Advertisers Pvt Ltd

Dhruvatara Apartments, Medinova Compound,
Somajiguda, Hyderabad – 500 081

.....Appellant

VERSUS

Commissioner of Central Tax

Hyderabad - II

LB Stadium Road, Basheerbagh,
Hyderabad, Telangana – 500 004

.....Respondent

with

Service Tax Appeal No. 1544 of 2010

(Arising out of Order-in-Appeal No. 35/2010 (H-II) ST dt.12.04.2010 passed by
Commissioner of Customs, Central Excise & Service Tax, Hyderabad)

Varadhi Advertisers Pvt Ltd

Dhruvatara Apartments, Medinova Compound,
Somajiguda, Hyderabad – 500 081

.....Appellant

VERSUS

Commissioner of Central Tax

Hyderabad - II

LB Stadium Road, Basheerbagh,
Hyderabad, Telangana – 500 004

.....Respondent

with

Service Tax Appeal No. 27783 of 2013

(Arising out of Order-in-Appeal No. 25/2013 (H-II) ST dt.31.05.2013 passed by
Commissioner of Customs, Central Excise & Service Tax, Hyderabad)

Varadhi Advertisers Pvt Ltd

Dhruvatara Apartments, Medinova Compound,
Somajiguda, Hyderabad – 500 081

.....Appellant

VERSUS

Commissioner of Central Tax

Hyderabad - III

LB Stadium Road, Basheerbagh,
Hyderabad, Telangana – 500 004

.....Respondent

with

Service Tax Appeal No. 30547 of 2016

(Arising out of Order-in-Appeal No. HYD-SVTAX-000-APP-0015-16-17-ST dt.22.04.2016
passed by Commissioner of Customs, Central Excise & Service Tax, Hyderabad)

Varadhi Advertisers Pvt Ltd

Dhruvatara Apartments, Medinova Compound,
Somajiguda, Hyderabad – 500 081

.....Appellant

VERSUS

Commissioner of Central Tax

Hyderabad - ST

LB Stadium Road, Basheerbagh,
Hyderabad, Telangana – 500 004

.....Respondent

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ST/757/2009, ST/1544/2010, ST/27783/2013
ST/30547/2016 & ST/30612 & 30622/2017

with

Service Tax Appeal No. 30612 of 2017

(Arising out of Order-in-Appeal No. HYD-SVTAX-000-APP-0272-16-17-ST dt.30.01.2017
passed by Commissioner of Customs, Central Excise & Service Tax, Hyderabad)

Varadhi Advertisers Pvt Ltd

Dhruvatara Apartments, Medinova Compound,
Somajiguda, Hyderabad – 500 081

.....Appellant

VERSUS

**Commissioner of Central Tax
Hyderabad - ST**

LB Stadium Road, Basheerbagh,
Hyderabad, Telangana – 500 004

.....Respondent

with

Service Tax Appeal No. 30622 of 2017

(Arising out of Order-in-Appeal No. HYD-SVTAX-000-COM-176-16-17-ST dt.16.01.2017
passed by Commissioner of Customs, Central Excise & Service Tax, Hyderabad)

Varadhi Advertisers Pvt Ltd

Dhruvatara Apartments, Medinova Compound,
Somajiguda, Hyderabad – 500 081

.....Appellant

VERSUS

**Commissioner of Central Tax
Hyderabad - ST**

LB Stadium Road, Basheerbagh,
Hyderabad, Telangana – 500 004

.....Respondent

Appearance

Shri P. Rama Krishna, Advocate for the Appellant.

Shri V.R. Pavan Kumar, AR for the Respondent.

Coram:

HON'BLE MR. R. MURALIDHAR (JUDICIAL)

HON'BLE MR. A.K. JYOTISHI, MEMBER (TECHNICAL)

FINAL ORDER No. A/30613-30168/2023

Date of Hearing: 08.06.2023

Date of Decision: 04.07.2023

[Order per: R. MURALIDHAR]

The Appellants are registered as Advertising Agency and are providers of services to various Government agencies and others by getting their advertisements published in various media channels. Mostly they take up this work for Government of Andhra Pradesh. The Appellants were issued Show Cause Notice on 16.04.2004 for the period 1998-1999 to 1999-2000 on the ground that they were providing the service of advertising agency and the demand of Rs.1,54,254/- & Rs.1,42,293/- was confirmed by the Adjudicating Authority. On Appeal, the Commissioner (Appeals) held that they are not liable to pay the Service Tax and allowed their Appeal. Against this Appeal, the Department had filed an Appeal before the Tribunal which was later withdrawn on account of monetary limits. This being so,

subsequently, one SCN was issued on 03.06.2008 alleging that the services provided by them amounted to provision of service under Business Auxiliary Services. Subsequently, further SCNs were issued on periodical basis and the demands were confirmed. Being aggrieved by the impugned Orders, the Appellant has filed the present Appeals before the Tribunal.

2. The learned Counsel submits that the Appellant is basically providing service to the Government of Andhra Pradesh and some other clients. The material to be published in the print media is given by such clients. The Appellant approach the print media like various daily newspapers and get these advertisements published. For booking such spaces with the print media, the Appellant pays the advertising charges upfront to the print media. After about sixty days, the Government of Andhra Pradesh and other clients, being satisfied that their advertisements have been properly published in newspapers, pass the bills raised by the Appellant. Thus he submits that for about sixty days the Appellant is paying charges to the print media and subsequently gets paid by their clients. In this process, the print media while raising the invoices on the Appellant gives him a discount of 10%-15%. The Department has initially in 1989-1999 to 1999-2000 taken the view that the activity undertaken by them is on account of 'advertising agency services' only. He submits that in terms of Section 65(105)(zzzm), when sale of space for advertisement in print media is involved, the same is exempt from payment of Service Tax. As their activity squarely pertains to such sale of space in the print media, per se, their service is fully exempt from payment of Service Tax. The Department purely in order to overcome the exemption granted for Advertising services, has taken a new stand in 2004 on the count that the services provided by the Appellant amounts to "Business Auxiliary Services". In this case, he submits that their client is only the Government of Andhra Pradesh or other clients who are actually getting their advertisements published through the Appellant. He submits that the print media like newspapers have not entered into any Contract/Agreement with the Appellant specifying that on procurement of certain advertisements the Appellant would be given any commission. Only if such transactions are entered into with the print media, the Department can allege that the Appellant has been receiving commission from the print media. In this particular case, it is on record that the Appellant pays upfront the advertisement charges to the print media wherein he gets discount of

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10%-15%. After waiting for about sixty days and ensuring that the advertisements are properly published in the newspapers, their clients release the amount to them based on the invoices raised by the Appellant on the clients. Therefore, this entire activity is just a kind of trading activity wherein he pays the charges up front to the print media and subsequently he realizes the amount from the client. The margin of 10%-15% provided is the profit made on account of such activities. Since there is no service provider and client relationship between him and the print media, the Department cannot allege that he is getting any commission for such work undertaken for the print media. It is not the case that the print media gives him a contract to bring him any turnover on their behalf and on such turnovers he is getting commission. As a member of the Indian Newspaper Society, when he books space with the newspapers for such advertisements, he gets the discount. On getting the full value from the client, the discount received by him is the profit margin. After taking into account that they are bearing the cost for the first sixty days and of other office expenses involved in these activities, the profit margin would be less than 5%. Even this amount is purely a profit made by them and cannot be treated as any commission received by him from the print media. He relies on the following case laws:

- i) EURO RSCG Advertising Ltd vs CCST, Bangalore [2007 (7) STR 277 (Tri-Bang)]
- ii) Kerala Publicity Bureau vs CCE [2008 (9) STR 101 (Tri-Bang)]
- iii) McCann Erickson (India) Pvt Ltd vs CST, Delhi [2008 (10) STR 365 (Tri-Del)]
- iv) CST, Ahmedabad vs Poornima Advertising & Promotion Pvt Ltd [2010 (20) STR 107 (Tri-Ahm)]
- v) P. Gautam & Co vs CST, Ahmedabad [2011 (24) STR 447 (Tri-Ahm)]
- vi) CCE, Chandigarh vs Reliant Advertising [2013 (31) STR 166 (Tri-Del)]
- vii) Grey Worldwide (I) Pvt Ltd vs CST, Mumbai [2015 (37) STR 597 (Tri-Mumbai)]

3. He submits that in all these cases, the issue involved is that of booking of advertising space in print media. The Tribunals have been consistently holding that the activity will not fall under the category of

Business Auxiliary Services and have allowed the Appeals filed by the Appellants. Accordingly, he prays that the Appeals may be allowed.

4. The learned AR submits that the services provided by the Appellant are in the nature of Business Auxiliary Services only. The Appellant is acting as an agent of the print media and the discount given by the print media in their invoices is the commission amount received by the Appellant. While there may not be any direct Agreement/Contract between the Appellant and the print media, by way of being a member of the Indian Newspaper Society, the Appellant gets the concession of lower rate for the advertisements provided in by them for publication in the newspapers. So far as changing of the stand by the Department from their initial classification of the service under advertising agency services to present Business Auxiliary Services, he submits that the Appellant is not providing the advertising services because the matter for advertisement is prepared by their client and they are only canvassing to get these published in the newspapers. Whatever amount is being given by the print media is the commission received by the Appellant which is liable to be taxed under Business Auxiliary Service. He reiterates the findings of the Lower Authorities to justify the confirmed demand. He further relies on the case law of Malar Publications Ltd vs CST, Chennai [2019 (20) GSTL 263 (Tri-Chennai)] wherein it was held that the Assessee is liable to pay the Service Tax for the amount received from the print media.

5. Heard both sides and perused the documents.

6. From the documentary evidence placed before us, it is seen that for getting the advertisement published, the Appellant gets an invoice from the print media wherein they are giving discount of 10%-15%. After the advertisement is published, the Appellant is raising the invoice on Government of Andhra Pradesh and other clients wherein he is charging the full amount. The difference between the invoice raised by the Appellant on their clients and invoice raised on the Appellant by the print media is the margin which is available to the Appellant. The Revenue claims that this margin is the commission earned by the Appellant for the services provided to the print media. From the records, no evidence has been brought in by the Department to the effect that the Appellant has been appointed as an

agent by the print media. Any person can be said to be acting as an agent only when there is specific Agreement between the person engaging the agent clearly specifying the terms of activities to be undertaken by them for the principal and the consideration to be given for such activities. Only then it can be concluded that the person is acting as an agent for the principal. In this case, just because the Appellant happens to be a member of the Indian Newspaper Society and gets concessional rate for getting the advertisements published in the print media, it cannot be concluded that this discount being given is on account of any commission paid by the print media. In this case, it is seen that it is a kind of trading activity in services. The Appellant first books the space by getting certain discount and sells the same at a higher rate to their clients. Therefore, the discount being received by him from the print media is nothing but a profit margin and not any commission received from the print media.

7. Coming to the case law cited by the Appellant in EURO RSCG Advertising Ltd (cited supra), the Tribunal has held as under:

"2. The appellants provide advertising services to their various clients. In order to provide the above services, they in turn, get in touch with media for booking of time slot on various satellite channels to their clients. As per industry practice, the Broadcasting agency provides 15% discount from their Tariff rate to the appellants.....

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In the present case, a person or an organization who wants to advertise their product approaches an advertising agency. Therefore such a person/organization who wants to avail the services of advertising agency becomes the client of the advertising agency. The advertisement can be done in various ways either through Print Media or through Radio or Television, etc. in order to fulfill the requirements of his client the advertising agency which is the service provider gets in touch with the appropriate media. In other words as far as the advertising agency is concerned, its client is not the media. In order to provide advertising services the advertising agency charges certain amounts from the clients. Such amounts are liable to service tax. With regard to the relationship between the advertising agency and the media, the advertising agency has to pay amount to the media and not the other way. To put it differently, the media such as broadcasting agency charges the advertising agency for insertion of the advertisement either in Print Media or in Television. In the present case, the media gives a discount of 15% to the advertising agency. If the Tariff rate is Rs. 100/-, it is sufficient the advertising agency pay the media Rs. 85/- along with service tax. The service tax component received from the advertising agency in turn is remitted to the exchequer by the media agency. The appellants have

demonstrated that they have not received any amount from the media. They got only a discount from them. Perhaps the word "commission" is misleading. There is actually no evidence that the said amount has been received by the appellant from the media. In any case, any amount received by the service provider from his client only is liable to service tax and not amounts received from others. The adjudicating authority has neither considered the factual position nor the legality of the entire issue. The impugned order 12/2005 dated 27-4-2005 has no merits. Since there is no service tax liability, there is no question of imposing penalty and demanding interest. Hence we set aside the same and allow the appeal with consequential relief. [Emphasis Supplied]

6. In the case of Kerala Publicity Bureau (cited supra) it is held as under:

"3. The brief facts of the case are that the appellants were covered under the category of advertising agencies. The Audit found that they had collected incentives from M/s. Malayala Manorama. The Revenue has considered these receipts as extra commission and had proceeded to recover Service Tax on these amounts by invoking larger period....

4. The learned Chartered Accountant submits that the above cited case along with the case of M/s. Euro RSCG Advertising Ltd. v. The Commissioner of Service Tax, on this very issue, was decided by this bench in assessee's favour. He produced a copy of the Final Order Nos. 60 & 61/2007 dated 27-12-2006 [2007 (7) S.T.R. 277 (Tribunal)] and prays for following the ratio by allowing the appeal. He points out that the Tribunal has clearly held that what was received was not taxable service and it was not a commission. The same facts are seen in the present case and prays for allowing the appeal.

6. On a careful consideration, I notice that the facts in the present case are identical to the one decided by the Division Bench in the case of M/s. Euro RSCG Advertising Ltd. and M/s. Marketing Consultants & Agencies Ltd. v. CST by Final Order Nos. 60 & 61/2007 [2007 (7) S.T.R. 277 (Tribunal)]....

Respectfully following the ratio of the above noted judgment, the impugned order is set aside and appeal allowed with consequential relief, if any. [Emphasis Supplied]

7. In the case of McCann Erickson (India) Pvt Ltd (cited supra), it is held as under:

"2. The appellants render taxable service under the category of "advertising agency service". They entered into contract with their clients for providing advertisement agency service. The appellants render advertising services to various clients in the form of creative agency wherein they create advertisement by themselves or their third party media agency wherein they do media printing and/or buying for advertisement to be published in print/electronic media. They were

receiving 15% agency commission from authorized broadcasting and print media during the period April 2000 to March 2001.....

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4. We heard both sides. The basic point which should be borne in mind is that service tax is levied on the gross amount received by the service provider from the recipient of the service for the services rendered. In this case, the appellant is the service provider. The appellant being an advertisement agency rendered advertising service by engaging print, electronic media etc. The tax authorities should see whether the appellants had discharged duty liability on the gross amount received from their clients. In this case, the various media are not clients of the appellant namely, the advertising agency. If the media gives discount of 15% to the appellant, that amount has nothing to do with the gross amount received by the appellant from their clients to whom they rendered advertisement services. Therefore, there is no logic in demanding service tax on the discount of 15% received by the appellant from print media. Identical issue was the subject matter of the Tribunal in the case of Euro RSCG Advertising Ltd. v. CCST, Bangalore reported in 2007 (7) S.T.R. 277 (Tribunal) = (2007) 9 STJ 56 (CESTAT Bangalore) wherein the issue was decided in favour of the appellants... [Emphasis Supplied]

8. In the case of Poornima Advertising & Promotion Pvt Ltd (cited supra), it is held as under:

"2. Heard both the sides. We find that the conclusion of the Commissioner (Appeals) that appellant is eligible for refund on merits is correct. The master circular issued by the board has clarified that merely canvassing advertisement for public on commission basis is not classifiable under the taxable service as advertising agency service. Such services are liable to Service tax under business auxiliary service. Poornima is engaged only booking of space or time. Whenever a request is received, Poornima simply books the space in the newspaper or books the time in the media and thereafter collects the amount paid to the media or newspaper. For this service provided to the client, service charge is collected by them. In fact Poornima gets a discount from the media/newspaper and they pass on a portion of the discount to the clients and retain balance which is their remuneration for the service provided by them. The revenue is in appeal against the decision of the Commissioner that the service provided by the appellant is not an advertising agency service. According to the Revenue, the scope of the service extends not only to any service connected with advertisement but also any service connected with display or exhibition of advertisement. However, we find that the master circular issued by the Board itself is against the Revenue and the service provided by the appellants is admittedly only in respect of booking the space or time. We agree with the learned Commissioner (Appeals) that the master circular covers the case of the appellants and therefore the Revenue's appeal about classification cannot be accepted.

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5. Another point which Commissioner (Appeals) has decided in favour of the appellants is that the Service tax liability arises only on the actual amount collected by the appellants and not on the full discount received by them from advertising agency, from the newspaper or the media. The very same issue had come up before the Tribunal in the case of Mccann Erickson India Pvt. Ltd. reported in 2008 (10) S.T.R. 365 (Tri.-Bang.) and also Euro RSCH Advertising Ltd. v. C.C.S.T., Bangalore reported in 2007 (7) S.T.R. 277 (Tri. -Bang.). In both the cases it was held that Service tax is payable only on the actual amount received by the service provider." [Emphasis Supplied]

9. In the case of P. Gautam & Co (cited supra), it is held as under:

8. It can be seen from the above reproduced findings that the issue regarding whether discounts/incentives given to the appellant as an advertising agency would be liable for the service tax under the business auxiliary services. It is seen and as correctly pointed out by the learned counsel that the Coordinate Bench of the Tribunal in the three cases as cited herein above, have held that the discounts/incentives received by the assessee from the print media will not be liable for service tax under the category of advertising agency services. If that be so, the said discounts/incentives itself cannot be considered for the purpose of taxability under the head business auxiliary services as the amounts which are received are in respect of the services provided under the category of advertising agency services and the amount are discounts and incentives and not as charges for services." [Emphasis Supplied]

9. In the case of Reliant Advertising (cited supra), it is held as under:

"13. In Euro RSCG Advertising Ltd., Id. Division Bench of this Tribunal has recorded that the appellants (therein) provided advertising services to their various clients and in order to do so, got in touch with media for booking of time slots on various satellite channels for their clients and as per industry practice the broadcasting agency provides 15% discount from their Tariff rate to the appellant. It is this discount on the tariff rate provided by the broadcasting agency that the appellant passes on to its clients and that 15% was brought to tax as income on which Service Tax is exigible. This Tribunal held that there was no evidence on record to the effect that any amount was received by the appellants from the media and ruled that amounts received by the service provider is alone liable to service tax and not amounts received from others. This Tribunal (in Euro RSCG Advertising Ltd.) held that the adjudicating authority failed consider the relevant facts or the legality of the entire issue insofar as issue of cash discount and concluded that cash discount is an income from payment of bills in advance and not from the services rendered to clients, therefore the same does not attract Service Tax as advertising agency service. [Emphasis Supplied]

10. In the case of Grey Worldwide (I) Pvt Ltd (cited supra), it is held as under:

"4.1 From the nature of the transactions undertaken in the present case, it is seen that the appellant is rendering advertising agency services to various clients who are the advertisers. On behalf of these advertisers, the appellant has placed advertisements in the print/electronic media. The choice of the print/electronic media is with the advertiser and not with the advertising agency, who merely co-ordinates between the media and the advertiser. On the agency commission received, they have discharged Service Tax liability. Similarly, the electronic media also discharges Service Tax liability on the consideration received for broadcasting which includes incentives, if any, to be paid. Thereafter, at the end of the year, depending upon the volume of business given by the advertising agency, the media gives certain incentives by way of volume discounts/rate difference. There is no agreement or understanding or any contract between the advertising agency and the media for promotion of the media's business activities. There is also no obligation on the part of the media to give these incentives. These payments are made only as a gratuitous payments for the advertisements placed on the media. There is no contractual obligation between the advertising agency and the media for provision of any services. In the absence of such a contractual obligation, it is difficult to accept the Revenue's contention that on the incentives received, the appellant is liable to Service Tax under BAS. This was the view taken by this Tribunal consistently in a series of decisions starting from Euro RSCG Advertising Ltd. (cited supra).

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..... Therefore, it can be seen that the Tribunal has been consistently taking the stand that incentives received by an advertising agency from the media without any contractual obligation to render any service cannot be levied to Service Tax under the category of BAS. Following the ratio laid down in these decisions, in the present case also, we hold that the demands on the amounts received from the media cannot be levied to Service Tax under BAS." [Emphasis Supplied]

11. From these case laws, it gets clarified that the issue is no more *res integra*. The amount of incentive received by the Advertising Agency from the print media has been under litigation and the Tribunals have been consistently holding that such incentives or discounts cannot be termed as Business Auxiliary Service.

12. On going through the case law relied upon by the Revenue, Malar Publications Ltd (cited supra), it is seen that the facts are different. There the Appellants were canvassing advertisements for the publications like Daily Thanthi, Rani Weekly etc., and were getting fixed retainership fee for their work. Therefore, the decision arrived at by the Tribunal in the case of Malar Publications Ltd is distinguishable and cannot be applied to the facts of the present case.

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13. Accordingly, we hold that the confirmed demand on the ground that the Appellant was providing Business Auxiliary Services to the print media cannot legally sustain. Therefore, we allow these Appeals filed by the Appellant with consequential relief, if any, as per law.

(Pronounced in the Open Court on 04.07.2023)

(R. MURALIDHAR)
MEMBER (JUDICIAL)

(A.K. JYOTISHI)
MEMBER (TECHNICAL)

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