IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL,
EAST REGIONAL BENCH : KOLKATA

S.T.Appeal No.280/09 & CO/06/10

(Arising out of Order-in-Original No.19/Commr./ST/Kol/2009-10 dt.31.08.2009 passed by Commissioner of Service Tax, Kolkata)

Commr. of Service Tax, Kolkata

Applicant (s)/Appellant (s)

Vs.

M/s Looked (India) Ltd.

Respondent (s)

Appearance:

Shri H. S. Abedin, Asstt. Commr. (A.R.) for the Revenue (s)
Shri S. K. Pahwa, Advocate for the Respondent (s)

CORAM:

HON'BLE SHRI P. K. CHOUDHARY, JUDICIAL MEMBER
HON'BLE SHRI BIJAY KUMAR, TECHNICAL MEMBER

Date of Hearing : 07.06.2018
Date of Decision : 07.06.2018

Final Order No.FO/76642/2018

Per Shri Bijay Kumar :

Revenue being aggrieved with the impugned order, has filed the present appeal.

2. Facts of the case in brief are that the Respondent-Assessee is engaged in providing advertisement services to their clients for publishing/broadcasting of advertisements in various print and electronic media. In respect of advertisements published in the print media, the Respondent paid the service tax on the 15% of the gross value of the bills raised to their clients and in case of advertisements broadcasted in the electronic media, they used to pay service tax on the total amount billed to their clients. But after July, 2006, the

Respondent raised debit notes to their clients to realize the amounts charged to them by the electronic media. It was also noticed that the Respondent availed Cenvat Credit of service tax to the extent of Rs.14,620/- along with Education Cess of Rs.301/- and Higher Education Cess of Rs.10/- on the basis of documents containing their office address at Cuttack, which was found to be irregular. Accordingly, show-cause notice was issued to the Respondent asking them to show-cause as to why the amount of service tax and cess amounting to Rs.1,82,55,094/- and Rs.3,61,395/- should not be recovered from them under the provisions of Section 73 (1) of the Finance Act, 1994 (for short the Act). Appropriate interest was also asked to be paid by the Respondent under the provisions of Section 75 of the Act along with recovery of Cenvat Credit alleged to be irregularly availed as per the provisions of Rule 14 of the Cenvat Credit Rules, 2004 (for short the Rules). Penalty was also proposed under Section 78 of the Act read with Rule 15(3) & 15 (4) of the Cenvat Credit Rules, 2004. The case was adjudicated upon by the ld.Commissioner, who upheld the charge regarding the Cenvat Credit availed along with interest and imposition of penalty. As the Respondent has paid the amount pertaining to the Cenvat Credit along with interest, the same was ordered to be appropriated. Penalty of Rs.2,000/- was imposed on the Respondent under Rule 15(3) of the Cenvat Credit Rules, 2004. Regarding demand of Rs.1,82,55,094/- along with Education Cess of Rs.3,61,395/- is concerned, the same was dropped and also no penalty was imposed under Section 78 of the Act read with Rule 15(4) of Cenvat Credit Rules, 2004.

3. With the above background, the ld.D.R. for the Revenue, has stated that the Adjudicating Authority has erred in not confirming the amount of the demand erroneously by holding that for publishing, advertisements were not taxable and sale of space and time for advertisements by the electronic media was covered under a separate services, namely, broadcasting service and electronic media transmitting the advertisement of the clients of the assessee duly discharged their service tax liability. He submits that the ld.Adjudicating Authority has observed that the Respondent-Assessee paid the service tax from August, 2006 on the commission received for providing advertisements service. It was held by the ld.Adjudicating Authority that the service tax payable on the amount received and not the amount billed, but from the Order-in-Original, it appears that in case of print media, the service tax was paid on the gross billed amount of 2006-2007. The ld.Adjudicating Authority has held that the Respondent-Assessee adopted mercantile system of accounting, but re-conciliation of the amount billed and actual amount received by the Assessee was not made in Order-in-Original. Therefore, in absence of such re-conciliation of the statement of account of the Assessee, it was not clear as to how service tax in case of print media was stated to be paid on the basis of gross amount billed. Particularly, when the assesses have themselves raised the contention that the service tax was payable on the basis of amount received and not on amount

billed. It was also stated by the D.R. for the Revenue that the difference in the figure of income of the Assessee between the amount shown profit and loss account and the amount shown in ST-3 Returns could only be explained after verification of the statement of account of the assessee, which was not done in this case by the Adjudicating Authority in full. The Adjudicating Authority has scrutinized some of the Bills. Regarding non-imposition of penalty under Rule 15 (4) of the Rules, without assigning reason, was also improper.

4. The ld.Advocate appearing on behalf of the Respondent-Assessee, has drawn our attention a Cross Objection filed by the Respondent, wherein it is stated that there is a categorical finding in the impugned order to the effect that the activity of the Respondent does not amount to providing advertising service as defined under the Act ; that the value of taxable service as defined under the Act, is the gross amount charged by the service provider in providing the taxable service. As the service provided by the Respondent is only for arrangement the space and time in print or electronic media, the amount received for this activity will only amount to the value of the taxable service. The amount charged by the media for displaying or broadcasting , the advertisement has no nexus with the service being provided by the Respondent ; that this is an amount on which demand was raised and the same has been held to be constituted the value of taxable service. Accordingly, no reconciliation as suggested in the appeal filed by the Department is unwarranted. Regarding non-imposition of penalty in respect of credit amounting to Rs.10,649/- is

concerned, the Respondent took the credit of the said amount , which were issued to their Cuttack Branch and hence, they are liable to penalty under Rule 15(3) of the Cenvat Credit Rules, 2004. As the amount involved was very insignificant, no penalty was imposed under Rule 15 (4) of the Rules.

5. We have considered the rival submissions and also perused the appeal records.

6. The issue involved in this case is regarding as to whether the Respondent has short paid the service tax inasmuch as they did not pay the service tax on the amount paid to the print/electronic media for publishing/broadcasting advertisements in print and electronic media and irregular availment of Cenvat Credit of Rs.10,649/-. There is no dispute on this issue, but for the imposition of penalty under Rule 15(4) of Cenvat Credit Rules, 2004. We find that the Department was of the view that penalty should have been imposed for contravention of Cenvat Credit Rules, 2004 by the Adjudicating Authority.

7. After going through the records, we find that considering the amount involved for availing Cenvat Credit wrongly, the Adjudicating Authority failed it appropriate not to impose penalty under Rule 15 (4) of the Cenvat Credit Rules, 2004, which we find is not irregular in any way. The issue involved in this case is only that the Respondent has got sale input invoices at the Cuttack Branch at the strength of which credit was taken by the Respondent. This appears to be genuine mistake and is not serious breach of the Cenvat Credit Rules.

Accordingly, we do not find merit in the appeal of the Department on this count.

8. Regarding the 1st issue, we find that the clarification was issued vide F.No.332/4/2008-TRU dated 05.05.2008 regarding sale of space for advertisement in print media does not attract service tax. The amount paid by the Respondent to the print media related to sale space advertisement in the print media. The said amount which was reimbursed by the respondent, was not chargeable to service tax in terms of aforesaid clarification issued by the Board. In the said letter, it was also clarified that the commission earned by way of facilitating sale of space in print media is leviable to service tax. The relevant portion of the said letter is reproduced below :

> *"In view of the fact that :-*
>
> *(i) the advertising agency is not buying space for advertisement in print media for its own use but only acts as an intermediary facilitating sale of media for advertisement ;*
>
> *(ii) space in print media is used by the client for own advertisement ;*
>
> *(iii) print media who sell space for advertisement is indicating the name of the actual consumer of the service in the invoice issued and the advertising agency can only collect such amount from the client as indicated by the print media who is seller of space ; and*
>
> *(iv) advertising agency pay service tax on the commission so received from the print media ; sale of space for advertisement in print media does not attract service tax. However, it may be noted that the commission carried by the advertising agency is leviable to service tax."*

In view of the above, the Adjudicating authority has correctly held that the service tax was not required to be paid by the Respondent on the amount paid by them to the print media and they have rightly paid the service tax on the discount and commission allowed by the print media during the material period. Regarding broadcasting advertisements by the Respondent, it is on record that the Respondent has arranged broadcasting advertisements and submitted some bills and invoices issued by the electronic media and corresponding debit notes and invoices issued by them to their clients. The Adjudicating Authority found that they issued debit notes on their clients for reimbursement of the bills raised by the electronic media and also issued separate bill to their clients for their service charge. It emerges from the above fact that the amount charged by the electronic media, relates to sale of space and time for advertisement to the electronic media. The sale of advertising space and time is a separate taxable service, which came to be service net on 01.05.2006. The person providing the said service was liable to pay service tax on the taxable value of such service. The Respondent acts as an intermediary between the clients and electronic media and therefore, on the basis of analogy adopted in TRU letter F.No.332/4/2008-TRU dated 05.05.2008, the Respondent cannot be made liable to pay service tax again on the amount charged for sale of time and space in electronic media, which was held to be separate tax altogether. However, the amount received by the Respondent for providing the service as an intermediary was liable to service tax. The Adjudicating Authority has followed the TRU Circular and accordingly, pass a well-reasoned speaking order, which is sustainable under the provisions of Finance Act, 1994. We also find that a few bills and invoices were perused by the Adjudicating Authority while extending the benefit. Accordingly, we do not find any irregularities for the sale. In case, if it is found at a later stage that the Respondent discloses correct figure regarding the bills and the amount received for rending the services, the issue will be open and the Department will not be precluded from raising fresh demand. In the appeal memorandum, the Revenue has not brought before us any evidence to show that there is any suppression, malafide on the part of the Respondent in submitting figures before the Adjudicating Authority. On this count, we find no infirmity in the impugned order. Accordingly, we reject the Revenue's appeal. Cross Objection also gets disposed off.

(Operative part of the Order was pronounced in the open Court.)

Sd/

(P. K. CHOWDHARY)
MEMBER (JUDICIAL)

Sd/

(BIJAY KUMAR)
MEMBER (TECHNICAL)

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