

**IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
KOLKATA
EASTERN ZONAL BENCH: KOLKATA**

Service Tax Appeal No. 76 of 2010

(Arising out of Order-in-Appeal No. 54/ST/09 dated 18.12.2009 passed by Commissioner of Central Excise (Appeal-I), Kolkata.)

M/s Modern Ad,
12, Panchanantala Road, Kolkata-700041.

....Appellant (s)

VERSUS

Commissioner of Central Excise (Appeal-I), Kolkata.
1, 169, A. J. C. Bose Road, Bamboo Villa, 4th Floor, Kolkata-700014.

....Respondent(s)

APPEARANCE :

None, for the Appellant
Shri A. Roy, Authorized Representative for the Respondent

CORAM:

**HON'BLE MR. ASHOK JINDAL MEMBER (JUDICIAL)
HON'BLE MR. K. ANPAZHAKAN MEMBER (TECHNICAL)**

FINAL ORDER No.76004/2023

DATE OF HEARING : 20.06.2023

DATE OF DECISION : 20.06.2023

PER K. Anpazhakan:

A Show Cause Notice dated 23.10.2006 was issued to M/s Modern Ad (The Appellant), a proprietorship Firm, on the ground that they have rendered Advertisement Agency service but not paid service tax of Rs 4,71,757/- including Education Cess. The Notice was adjudicated and the demands were confirmed vide Order-in-Original dated 30.05.2007. A penalty of Rs.4,71,757/- was imposed under Section 78 of the said Act. Penalty was also imposed under Sections 76 and 77 of the Finance Act, 1994. On appeal, the Commissioner

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(Appeals) upheld the demands vide the impugned order dated 18.12.2009. The Appellant has filed the present appeal against this impugned order.

2. In their submissions, the Appellant stated that they simply let out the hoardings on rental charges to M/s Eden Media Pvt. Ltd., M/s Sampark and other advertising agencies who on their turn, displayed or exhibited advertisement on those hoardings. They never conceptualized, designed or prepared advertisement for its display on the hoardings.

4. The Appellant stated that the impugned order has not brought out any evidence to establish that they were in any way connected with making, preparation, displaying and exhibiting of advertisements for and on behalf of any client. On the other hand, the material evidences available on record clearly establish that they were letting out the space obtained by them from organizations like Calcutta State Transport Corporation and Metro Railway (hoarding sites) to certain advertising agencies like M/s Sampark (Kolkata), Bells Advertising (Kolkata), Dilip Kumar Bhattacharya (Kolkata) and M/s M.A. Publicity (Kolkata) on fixed monthly charges. It is settled by various decisions of the Tribunal that such monthly charges for letting out space for advertisement on hoarding sites, is not liable to service tax as defined under Section 65(105)(e) of the Finance Act, 1994. Accordingly, they prayed for setting aside the impugned order.

5. The Ld. A.R. reiterated the findings in the impugned order.

6. Heard both sides and perused the appeal records.

7. The issue to be decided in this appeal is whether the Appellant has rendered Advertisement Agency Service liable to service tax as defined in Section 65(105)(e) of the Finance Act, 1994 or they were merely providing the space for the advertisement to other advertisement agencies

8. We observe that in order to classify the activities carried out by the Appellant within the ambit of 'Advertisement Agency Service', as provided

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under Section 65(105)(e) of the Finance Act, 1994, the following ingredients must be satisfied:

(a) There must be an advertisement.

(b) The service provider must be a person engaged in providing activities such as (i) making (ii) Preparation (iii) display or (iv) exhibition of the advertisements.

6. In the instant case, we observe that the Appellant was only providing space for advertisements on collection of rental charges. The impugned order did not disclose any evidence to the effect that the Appellant themselves had conceptualized, visualized and designed the advertisements.

7. In the case of Commissioner of Central Excise Vs. Team UPD Ltd., 2005 (179) ELT 469, it has been held that unless it is established that the person concerned had conceptualized, visualized and designed the advertisement, merely allowing its site to be used for display of advertisement by another party against payment of charges are not covered under the definition of "Advertisement Agency" in Section 65(3) of Finance Act, 1994. The relevant portion of the decision is reproduced below:

"3. After examining the records carefully, I find that the challenge in this appeal of the Revenue is only in respect of the service tax on the rent received by the assessee from PEPSICO. There seems to be no challenge in relation to LAQSHYA. In this background, I have perused the terms of the relevant lease agreement between the respondents and PEPSICO, available on record. Under this agreement, the respondents received US \$ 40,000 per annum towards rental for the aforementioned advertisement site. Another noteworthy condition of this agreement reads as under :

"UPD shall print the skin for both the sides of the billboard, as per design sent by Pepsi. The cost of the skins is included in the price as in point No. 1".

It appears from the above lease agreement that the advertisements to be displayed on the billboard installed and maintained by the

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respondents were designed by PESICO. In this connection, I must read the Trade Notice relied on by the Counsel. This Trade Notice reads as under :-

Trade Notice No. 99/GL-9Q/CE/PRO/CAL-II/99, dated 16-9-1999 of the Calcutta Commissionerate -

"Attention of the Trade and Field Formations are invited to the fact that, doubts have been raised as to whether persons engaged in the activity of compilation, printing and publishing of telephone directories. Yellow pages and business directories are covered under the definition of 'advertising agency' and accordingly liable to pay service tax.

2. The matter has been examined by the Ministry of Finance, Department of Revenue (Tax Research Unit), it has been decided that in the case of persons, who are printing and publishing telephone directories, Yellow pages or business directories, their activity is essentially of printing a ready-made advertisements from the advertisers and publishing the same in the directory. Their activities are similar to those carried out by newspaper or periodicals. As such, this activity shall not attract service tax. However, if these persons also undertake any activity relating to making or preparation of an advertisement, such as designing, visualising, conceptualising etc., then they will be liable to pay service tax on the charges made thereon."

The above Trade Notice exempted "Printers and Publishers" of Telephone Directory's Yellow pages from the purview of service tax by holding that such persons who were engaged in the activity of printing ready-made advertisements on Yellow pages were not covered under the definition of "advertising agency" for service tax purpose. The Trade Notice, however, mentioned an exception, which has been relied on by the Id. SDR today. This exception is to the effect that, if the aforesaid persons are also engaged in the activity of designing, visualising, conceptualising, etc., of advertisements, they will be liable to pay service tax on the charges raised thereon. It is easy to note that among the three activities, namely, designing, visualising, conceptualising stated in the Trade Notice 'designing' should succeed the other two inasmuch as conceptualisation and visualisation are preparatory to the physical activity of designing. In the instant case, PEPSICO designed the advertisements, which implies that the conceptualisation and visualisation of the advertisements were also done by them. Therefore, the instant case does not fall within the field of the above exception in

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the Trade Notice. It, then, must belong to the general area covered by the Trade Notice. Accordingly, the benefit of the Circular is available to the respondents. On a perusal of the Tribunal's decision in Contact Advertising Agency (supra), I note that the Delhi Bench of the Tribunal took note of Board's Circular dated 16-8-1999 (which apparently formed the basis of the aforesaid Trade Notice) and held that service tax was attracted only on those advertising agencies which were providing service to the advertisers by conceptualising, designing or preparing advertisement. In the case of Azad Publications (supra), the same Bench held that the display of advertisement by the assessee on its site for rental charges did not attract levy in the form of service tax. This decision has been followed in the case of the Incoda (supra). The Tribunal's decision in the case of Star Neon Sign (supra) is also to the same effect.

4. *In the result, the impugned order upholding the case of the respondents is affirmed and the Revenue's appeal is rejected."*

8. In the instant case, we observe that the Appellant has not performed conceptualization, visualization and designing of the advertisement. Thus, they have not fulfilled the condition precedent required to satisfy the service under the category of Advertisement Agency Service.

9. It is not disputed that the Appellant has rented out the space obtained by them from organizations like Calcutta State Transport Corporation and Metro Railway to other Advertisement Agencies like M/s Sampark (Kolkata), Bells Advertising (Kolkata), Dilip Kumar Bhattacharya (Kolkata) and M/s M.A. Publicity (Kolkata) on fixed monthly charges. These Advertisement Agencies who has taken these space on rent from the Appellant actually conceptualize and design the advertisements and they are liable to pay service tax under the category of Advertisement Agency Service and not the Appellant. Accordingly, we hold that letting out space for advertisement on hoarding sites, on collection of rental charges, as done by the Appellant are not liable to service tax under the category of Advertisement Agency Service as defined under Section 65(105)(e) of the Finance Act, 1994. In view of the above, we hold

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that the demand of service tax confirmed in the impugned order is not sustainable. Since the demand itself is not sustainable, the demand of interest and imposition of penalties under Sections 76.77 and 78 of the Finance Act, 1994 is also not sustainable.

9. In view of the above discussion, the appeal filed by the Appellant is allowed.

(Dictated and pronounced in the open court)

Sd/-
(Ashok Jindal)
Member (Judicial)

Sd/-
(K. Anpazhakan)
Member (Technical)

Tushar