IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
WEST ZONAL BENCH AT MUMBAI

APPEAL NOS: ST/88069-88070 & 88701-88702/2013

[Arising out of Order-in-Original No: 07-08/NG/COMMR/Th-II/2013 dated 7th May 2013 passed by the Commissioner of Central Excise, Thane – II.]

APPEAL NOS: ST/88069-88070/2013

Aastha Broadcasting Network Ltd … ***Appellant***

versus

Commissioner of Central Excise
Thane – II ***…Respondent***

APPEAL NOS: ST/88701-88702/2013

Commissioner of Service Tax
Mumbai – II … ***Appellant***

versus

Aastha Broadcasting Network Ltd ***…Respondent***

Appearance:

Shri A.K. Prasad, Advocate for the assessee/appellant

Shri Suresh Merugu, Joint Commissioner (AR) for Revenue

CORAM:

Hon'ble Dr. D. M. Misra, Member (Judicial)
Hon'ble Shri C. J. Mathew, Member (Technical)

Date of hearing: 22/10/2018
Date of decision: 22/10/2018

ORDER NO: A/88320-88323 / 2018

<u>Per: Dr. D.M. Misra</u>

Out of these four appeals filed, two by the assessee and two by Revenue against the same Order-in-Original No: 07-08/NG/COMMR/Th-II/2013 dated 7TH May 2013 passed by the Commissioner of Central Excise, Thane – II

2. Briefly sated, the facts of the case are that the assessee-appellant had been engaged in providing taxable service under the category of ‘broadcasting agency service’ during the relevant period. They were initially issued with a show cause notice on 7th March 2005 alleging non-payment of service tax under the above taxable category during the period July 2001 to August 2004 amounting to ₹ 1,15,94,714/- and proposed to recover the same with interest and penalty. On adjudication, the said demand was confirmed with interest and penalty. Against the said order an appeal was filed before this Tribunal and this Tribunal *vide* order dated 29th May 2007 remanded the matter to the adjudicating authority to re-compute the liability by taking into consideration reimbursable expenses claimed as deduction from gross taxable value by the assessee-appellant. The assessee-appellant was also issued with another show cause notice for the period September 2004 to March 2006 alleging non-payment of service tax of ₹ 1,75,43,595/- on the said taxable service and proposed

its recovery with interest and penalty. The Learned Commissioner re-adjudicated both the notices simultaneously and taking into consideration the evidences on record, reduced the demand in the first show cause notice dated 7th March 2005 from ₹ 1,15,94,714/- to ₹ 43,69,620/- and in the case of second show cause notice dated 20th April 2007 from ₹ 1,75,43,595/- to ₹ 58,85,873/-; also imposed penalty under section 76, 77 and equivalent penalty under section 78 of the Finance Act, 1994. Aggrieved by the said order of confirmation of the demand, the assessee is in appeal, whereas the Revenue is in appeal against reduction of the demands by the adjudicating authority.

3. At the outset, the Learned Authorised Representative has submitted that in the impugned order, the adjudicating authority has mis-understood and mis-construed the remand direction by this Tribunal and reduced the demand without proper verification of the relevant records, invoices, etc. He submits that this Tribunal while remanding the matter to the adjudicating authority held that the various heads of expenditures, namely, tapes purchased, live telecast expenses and other shooting expenses, production staff salary, transponder hire charges, conveyance for shooting, domestic travelling, lodgings and boarding, etc. be considered, while computing the demand raised in the show cause notice dated 7th March 2005 and confirmed the earlier by the adjudicating authority. While remanding

the matter this Tribunal observed that while recalculating the demand in allowing the reimbursable expenses as claimed by the assessee-Appellant, Chartered Accountant's certificate produced may also be considered. It is his contention that only on the basis of the Chartered Accountant's certificate, without verifying the nature and admissibility of the reimbursable expenses, and the relevant evidences, the adjudicating authority has wrongly reduced the demand. It is his contention that the nature of the reimbursable expenditure should have considered first, and the quantum of the same should have arrived on the basis of the evidences on record and the evidences that were required to be produced by the appellant. He submits that the same methodology has also been adopted by the adjudicating-Commissioner while deciding the show cause notice dated 20th April 2007 for the period September 2004 to March 2006. It is his contention that, therefore, the appeals needs to be remanded to the adjudicating authority to reconsider the nature of expenditures and its admissibility as reimbursable expenses in the hands of the Appellant-assessee and the quantum of such expenses thereafter could be determined taking into consideration the supporting evidences, namely, invoices, etc. along with other documents available on record and the evidence that would be produced by the assessee in support of their case.

4. Per contra, Learned Advocate, Shri AK Prasad, for the

assessee-appellant has submitted that this Tribunal has directed the Learned adjudicating authority to allow the reimbursable expenses to be deducted in arriving at the taxable value of service provided by the appellant. The Learned adjudicating authority, taking into consideration the Chartered Accountant’s certificate issued for the respective year and after verification of the said figures from balance sheet filed and the report of respective Commissionerate, allowed the reimbursable expenses as deduction, hence the Revenue’s appeal is devoid of merit. He has further contended that the adjudicating-Commissioner erred in conforming a part of the demand on the ground that they have failed to substantiate that these expenses being reimbursable nature. He, however, fairly submits that even though the Learned Commissioner have not discussed the heads of each of the expenditure whether reimbursable or otherwise, however, considered the amounts entered in the respective balance sheet and allowed the same as reimbursable expenditure while computing the service tax liability for the relevant period. He submits that he has no objection in remanding the case to the adjudicating authority to verify the nature of these expenses whether qualified to be reimbursable expenses. However, the issues other than reimbursable expenses raised in the second show cause notice dated 20th April 2007 since attained finality being no appeal by the Revenue, should not be reopened.

5. Heard both the sides and perused the records.

6. We find that during the relevant period, the appellant has provided taxable service under the category of 'broadcasting agency service'. Also in the first round of litigation the liability to service tax under the said taxable category has attained finality on merit. However, for computation of the demand, the matter was remanded to the adjudicating authority by making the following observation:

> *"3. ………………We note that the appellants have filed detailed charts before the Commissioner under cover of letters dated 30.6.2004 covering the period 15.7.2001 to 31.3.2002, dated 6.8.2004 covering the period 1.4.2002 to 31.3.2003, dated 13.8.2004 covering the period 1.4.2003 to 31.3.2004 and February 2005 for the period 1.4.2004 to 31.8.2004, containing particulars of invoices issued and details of payments received. If the Commissioner was not satisfied with the details provided in the charts, it was open to him to call upon the assessees to produce the copies of the invoices in order to verify the appellants' claim that they had incurred expenses on behalf of their clients and that the clients had reimbursed these expenses. …….."*

7. On a careful reading of the order of this Tribunal it is clear that the figures entered in the charts referred to in the said order needs verification and the Learned adjudicating authority was at liberty to call for further evidences to ascertain whether these expenses were incurred on behalf of the clients so as to be eligible as reimbursable expenses for deduction while computing the taxable value. All other issues including the plea of time-bar are left open for *denovo* decision.

The Learned Commissioner in the remand proceedings failed to analyse the issue whether these expenses claimed to have been borne on behalf of the client so as to qualify as reimbursable expenses to be deducted from the gross taxable value, but he has mechanically applied the Chartered Accountant's certificate and accordingly computed the demands. We are of the opinion that the said finding of the Learned Commissioner is contrary to the letter and spirit of the remand order of this bench is the outcome of mis-reading of the order. Consequently, the impugned order is set aside and the matter is remanded to the adjudicating authority to reconsider the said issue afresh by ascertaining the nature of expenses, its correctness and whether the same would qualify as reimbursable expenses for deduction as provided under the relevant provision of the Finance Act, 1994 and the rules made thereunder, and decide the other ancillary issues thereafter. The issues which are decided in favour of the Appellant-assessee and not challenged by the Revenue in their grounds would attain finality and not to be reconsidered in the *denovo* proceedings.

8. The appeals are allowed by way of remand.

(Pronounced in Court)

(C J Mathew)	**(Dr. D.M. Misra)**
Member (Technical)	***Member (Judicial)***

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