IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

STA No.9 of 2014 (O&M)
Date of decision: August 10, 2015

M/s Reliant Advertising

……Appellant

Vs.

Commissioner, Central Excise and another

…..Respondent

CORAM: HON'BLE MR. JUSTICE AJAY KUMAR MITTAL
HON'BLE MR. JUSTICE RAMENDRA JAIN

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

Present: Mr. Sudhir Makkar, Advocate for the appellant.
Mr. Sunish Bindlish, Advocate for the respondents.

Ajay Kumar Mittal,J.

1. This appeal has been filed by the assessee-appellant under Section 35G of the Central Excise Act, 1944 (in short, "the 1944 Act") read with section 83 of the Finance Act, 1994 (in short, "the 1994 Act") against the impugned order dated 9.4.2013, Annexure A.9 passed by the Central Excise and Service Tax Appellate Tribunal (in short, "the Tribunal") and the order dated 2.7.2007, Annexure A.5 passed by the adjudicating authority, claiming following substantial questions of law:-

> "i) Whether under the factual matrix where the adjudicating authority extended the benefit of section 80 of the Finance Act, 1994 by holding that the action of the appellant in context of discharging the liability for paying service tax was bonafide, the action of the revenue in invoking the extended period of limitation under section 73(2) of the Finance Act, 1994 Act is justified?

ii) Whether action of the respondents is bonafide and justified for creating demand of service tax merely on the basis of turnover figures as reflected in the balance sheets which include amounts pertaining to space selling, sundry debtors, credit notes, cash discounts, incentives but no service tax was payable thereupon?

iii) Whether in the present case where the alleged demand of service tax pertains to the period from 1.4.2001 to 31.12.2005, the learned CESTAT has illegally relied upon the taxing provision under Section 65(105) (zzzm) of the Act, which came into existence w.e.f 1.5.2006?

iv) Whether the impugned order passed by the learned CESTAT is illegal and contrary to the provision of law as enumerated under section 65(105)(e) of the Act and Central Board Circular dated 5.11.2003 vide which the liability to pay service tax for space selling in the field of advertisement was kept out of service tax net?

v) Whether the demand of service tax against the Sundry debtors and credit notes where amount was not realized, is against Rule 6 of the ST Rules and the same is in violation of the principles of natural justice?

2. A few facts relevant for the decision of the controversy involved as narrated in the appeal may be noticed. The Central Excise Officers visited the premises of the appellant i.e. M/s Reliant Advertising, 1643, Sector 4, Panchkula and during search, certain documents relating to advertising business were recovered. On scrutiny, it was found that the total value of services of release of advertisement for the period from 1.4.2001 to 31.12.2005 as per Release order Registers was ₹ 7,97,81,123.14 whereas upon calculations, from the balance sheets, this was found to be ₹ 7,98,22,231.46 for the same period. Scrutiny of ST3 returns filed by the

appellant revealed that it had declared total amount billed for the taxable services provided during the period from 1.4.2001 to 30.9.2005 as ₹ 1,18,18,348.57 and had paid service tax amounting to ₹ 1,26,584.39 and education cess amounting to ₹ 690/-. The appellant had short paid service tax amounting to ₹ 7,11,804.78 and ₹ 3692.90 towards the services of release of advertisement. The appellant was issued show cause notice dated 16.10.2006, Annexure A.3 which was adjudicated by the Additional Commissioner, Central Excise Chandigarh who confirmed the demand of service tax and also imposed penalties vide order dated 2.7.2007, Annexure A.5. Aggrieved by the order, the assessee filed appeal before the Commissioner (Appeals) Central Excise and Customs, Chandigarh**.** Vide order dated 14.11.2007, Annexure A.7, the appeal was allowed. The revenue filed appeal before the Tribunal. Vide order dated 9.4.2013, Annexure A.9, the appeal was allowed and the order dated 14.11.2007 passed by the Commissioner (Appeals) was set aside. Hence the instant appeal by the assessee-appellant.

3. We have heard learned counsel for the parties and do not find any merit in the appeal.

4. The adjudicating authority vide order dated 2.7.2007, Annexure A.5 confirmed the demand of service tax amounting to ₹ 7,11,804.78 and education cess of ₹ 3692.90 for the period from 1.4.2001 to 31.12.2005 under Section 73(2) of the 1994 Act by invoking extended period of limitation. Recovery of interest on the confirmed demand under Section 75 of Chapter V of the 1994 Act was also ordered. The Commissioner (Appeals) on appeal by the assessee vide order dated 14.11.2007, Annexure

A.7 held that where merely canvassing was involved to contact potential advertiser and the services like estimating the space that advertisements would occupy, negotiating the price, informing the general lay out of the advertisement were not involved, then service tax was not liable on such canvassing. Relying on the judgment of the Tribunal at Bangalore in ***Euro RSCG Advertising Limited vs. Commissioner of CST Bangalore*** 2007(7) STR 277 (Tri.-Bangalore) wherein it was held that the amounts received as cash discount and incentives were not liable to service tax since no service was provided by the advertising agency to the media, the Commissioner (Appeals) recorded that the incentives or cash discounts shown as commission in the balance sheet of the appellant were not liable to service tax. Aggrieved by the order, the revenue went in appeal before the Tribunal. The Tribunal while reversing the order passed by the Commissioner (Appeals), vide order dated 9.4.2013, Annexure A.9 recorded that the assessee was not assessed to service tax on any transaction involving sale of space for advertisement in print media. It was concluded that the activity of the appellant-assessee fell within the taxable service of “advertising agency”. The relevant findings read as under:-

> “6. Section 65(2) of the Finance Act 1994 (hereinafter the Act) defines “advertisement” as including “any notice, circular, label, wrapper, document, hoarding or any other audio or visual representation made by means of light, sound, smoke or gas'. Sub section (3) of Section 65 defines “advertising agency” as meaning any person engaged in providing any service connected with the making, preparation, display or exhibition of advertisement and includes an advertising consultant”. Sub section 105 of Section 65 read with clause (e)

thereof defines a taxable service (in the context) as a service provided to any client, by an advertising agency in relation to advertisement, in any manner and clause (zzzm) of Section 65 (105) defines the relevant taxable service as service provided to any person, by any other person, in relation to sale of space or time for advertisement, in any manner; but excluding sale of space for advertisement print media and sale of time slots by a broadcasting agency or organisation. Explanation (1) to Section 65(105) (zzzm) defines the expression "sale of space or time for advertisement" to include providing space or time, as the case may be, for display, advertising, showcasing of any product or service in video programmes, television programmes or motion pictures or music album, or on billboards, public places, buildings, conveyances, cell phones, automated teller machines, internet, etc.

7. It is the admitted case that the assessee was not assessed to tax by the adjudication order in respect of any transaction involving sale of space for advertisement in the print media.

8. The assessee is admittedly a commercial concern engaged in providing advertisement services to a client, in relation to advertisement i.e. in relation to sale of space or time and was not charged for sale of space for advertisement in the print media. He receives requisitions for arranging advertisements either directly by an advertiser or from another advertising agency and is also engaged on occasions in passing on material received from an advertiser directly without any value addition, to the advertising medium or in some instances by making value additions by way of advertising inputs; and in case of transactions involving another advertising agency based on the advertising material so received from the principal agency to the advertising media."

5. Further, as pointed out by the learned counsel for the respondents, in the adjudicating order dated 2.7.2007, Annexure A.5, in

answer to the question whether the appellant collected service tax from its clients on all the bills raised by it, Mrs. Shaifali Singh, partner of the assessee made statement on 23.8.2006 wherein it was stated that it received 15% commission from the newspapers on gross business with them and collected service tax on that commission from its clients on the bills raised by it. The relevant portion read thus:-

> "Q.5: How do you raise bills to your clients and collect Advertising charges and whether it includes service tax? How do you arrive at the taxable value for payment of service tax? Have you collected service tax from your clients on all the bills raised by you?
>
> A: We receive 15% commission from the newspapers on gross business with them and we collect service tax on this commission from our clients on the bills raised by us."

Still further, in answer to Question No.6 also, the correctness of the figures of turnover from advertising business was admitted. The relevant portion thereof is as under:-

> "Q.6: In your balance sheets the figures of turnover by press advertisement receipt have been shown as :

Year	***Turnover (Rs.)***
2001-02	1,53,71,255.12
2002-03	1,77,07,149.35
2003-04	2,71,55,528.86
2004-05	93,18,097.73

> Are these the correct figures as per your balance sheets?
>
> Answer: Yes, these are the figures of turn over of our advertising business as shown in balance sheets of our firm."

Thus, service tax amounting to ₹ 7,11,804.78 and Education cess of ₹ 3692.90 for the period 1.4.2001 to 31.12.2005 had been rightly imposed on the assessee-appellant besides recovery of interest on the confirmed demand.

6. In view of the above, we do not find any illegality or perversity in the impugned order so as to call for interference by this Court. Thus, no substantial question of law arises and the appeal is hereby dismissed.

(Ajay Kumar Mittal)
Judge

August 10, 2015
'gs'

(Ramendra Jain)
Judge