



आयुक्त(अपील)का कार्यालय,
Office of the Commissioner (Appeal),

केंद्रीय जीएसटी, अपील आयुक्तालय, अहमदाबाद
Central GST, Appeal Commissionerate, Ahmedabad
जीएसटी भवन, राजस्वमार्ग, अम्बावाड़ी अहमदाबाद ३८००१५.
CGST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015
☎ 07926305065 - टेलिफैक्स 07926305136



DIN : 20220364SW000000D957

स्पीड पोस्ट

- क फाइल संख्या : File No : GAPPL/COM/STP/1434/2021 / 6480 - 8K
- ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-EXCUS-003-APP-113/2021-22**
दिनांक Date : **14-03-2022** जारी करने की तारीख Date of Issue 21.03.2022
आयुक्त (अपील) द्वारा पारित
Passed by **Shri Akhilesh Kumar**, Commissioner (Appeals)
- ग Arising out of Order-in-Original No. **A.C./M.P. Dabhi/24/CEX/Kadi** दिनांक: **25.11.2020** issued by Assistant Commissioner, CGST & Central Excise, Division Kadi, Gandhinagar Commissionerate
- घ अपीलकर्ता का नाम एवं पता Name & Address of the **Appellant / Respondent**

M/s Cera Sanitaryware Ltd
9, GIDC Industrial Estate, Kadi,
Dist. Mehsana, Gujarat-382715

कोई व्यक्ति इस अपील आदेश से असंतोष अनुभव करता है तो वह इस आदेश के प्रति यथास्थिति नीचे बताए गए सक्षम अधिकारी को अपील या पुनरीक्षण आवेदन प्रस्तुत कर सकता है।

Any person aggrieved by this Order-In-Appeal may file an appeal or revision application, as the one may be against such order, to the appropriate authority in the following way:

भारत सरकार का पुनरीक्षण आवेदन :

Revision application to Government of India:

- (1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1994 की धारा अतत नीचे बताए गए मामलों के बारे में पूर्वोक्त धारा को उप-धारा के प्रथम परन्तुक के अंतर्गत पुनरीक्षण आवेदन अधीन सचिव, भारत सरकार, वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, संसद मार्ग, नई दिल्ली : 110001 को की जानी चाहिए।
- (i) A revision application lies to the Under Secretary, to the Govt. of India, Revision Application Unit Ministry of Finance, Department of Revenue, 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi - 110 001 under Section 35EE of the CEA 1944 in respect of the following case, governed by first proviso to sub-section (1) of Section-35 ibid :
- (ii) यदि माल की हानि के मामले में जब ऐसी हानिकार खाने से किसी भण्डागार या अन्य कारखाने में या किसी भण्डागार से दूसरे भण्डागार में माल ले जाते हुए मार्ग में, या किसी भण्डागार या भण्डार में चाहे वह किसी कारखाने में या किसी भण्डागार में हो माल की प्रकिया के दौरान हुई हो।
- (ii) In case of any loss of goods where the loss occur in transit from a factory to a warehouse or to another factory or from one warehouse to another during the course of processing of the goods in a warehouse or in storage whether in a factory or in a warehouse.



(क) भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित माल पर या माल के विनिर्माण में उपयोग शुल्क कच्चे माल पर उत्पादन शुल्क के रिबेट के मामलों में जो भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित है।

(A) In case of rebate of duty of excise on goods exported to any country or territory outside India of on excisable material used in the manufacture of the goods which are exported to any country or territory outside India.

(ख) यदि शुल्क का भुगतान किए बिना भारत के बाहर (नेपाल या भूटान को) निर्यात किया गया माल हो।

(B) In case of goods exported outside India export to Nepal or Bhutan, without payment of duty.

अंतिम उत्पादन की उत्पादन शुल्क के भुगतान के लिए जो ड्यूटी क्रेडिट मान्य की गई है और ऐसे आदेश जो इस धारा एवं नियम के मुताबिक आयुक्त, अपील के द्वारा पारित वो समय पर या बाद में वित्त अधिनियम (नं.2) 1998 धारा 109 द्वारा नियुक्त किए गए हो।

(c) Credit of any duty allowed to be utilized towards payment of excise duty on final products under the provisions of this Act or the Rules made there under and such order is passed by the Commissioner (Appeals) on or after, the date appointed under Sec.109 of the Finance (No.2) Act, 1998.

(1) केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001 के नियम 9 के अंतर्गत विनिर्दिष्ट प्रपत्र संख्या इए-8 में दो प्रतियों में, प्रेषित आदेश के प्रति आदेश प्रेषित दिनांक से तीन मास के भीतरमूल-आदेश एवं अपील आदेश की दो-दो प्रतियों के साथ उचित आवेदन किया जाना चाहिए। उसके साथ खाता इ.का मुख्य शीर्ष के अंतर्गत धारा 35-इ में निर्धारित फी के भुगतान के सबूत के साथ टीआर-6 चालान की प्रति भी होनी चाहिए।

The above application shall be made in duplicate in Form No. EA-8 as specified under Rule, 9 of Central Excise (Appeals) Rules, 2001 within 3 months from the date on which the order sought to be appealed against is communicated and shall be accompanied by two copies each of the OIO and Order-In-Appeal. It should also be accompanied by a copy of TR-6 Challan evidencing payment of prescribed fee as prescribed under Section 35-EE of CEA, 1944, under Major Head of Account.

(2) रिविजन आवेदन के साथ जहाँ संलग्न रकम एक लाख रुपये या उससे कम होतो रुपये 200/- फीस भुगतान की जाए और जहाँ संलग्नरकम एक लाख से ज्यादा हो तो 1000/- की फीस भुगतान की जाए।

The revision application shall be accompanied by a fee of Rs.200/- where the amount involved is Rupees One Lac or less and Rs.1,000/- where the amount involved is more than Rupees One Lac.

सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवा कर अपीलीय न्यायाधिकरण के प्रति अपील:-
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1944 की धारा 35-बी/35-इ के अंतर्गत:-

Under Section 35B/ 35E of CEA, 1944 an appeal lies to :-

(क) उक्तलिखित परिच्छेद 2 (1) क में बताए अनुसार के अलावा की अपील, अपीलो के मामले में सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण(सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, अहमदाबाद में 2ndमाला, बहुमाली भवन ,असरवा ,गिरधरनागर,अहमदाबाद-380004

(a) To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at 2ndfloor,BahumaliBhawan,Asarwa,Girdhar Nagar, Ahmedabad : 380004. in case of appeals other than as mentioned in para-2(i) (a) above.



The appeal to the Appellate Tribunal shall be filed in quadruplicate in form EA-3 as prescribed under Rule 6 of Central Excise(Appeal) Rules, 2001 and shall be accompanied against (one which at least should be accompanied by a fee of Rs.1,000/-, Rs.5,000/- and Rs.10,000/- where amount of duty / penalty / demand / refund is upto 5 Lac, 5 Lac to 50 Lac and above 50 Lac respectively in the form of crossed bank draft in favour of Asstt. Registrar of a branch of any nominate public sector bank of the place where the bench of any nominate public sector bank of the place where the bench of the Tribunal is situated.

- (3) यदि इस आदेश में कई मूल आदेशों का समावेश होता है तो प्रत्येक मूल आदेश के लिए फीस का भुगतान उपर्युक्त ढंग से किया जाना चाहिए इस तथ्य के होते हुए भी कि लिखा पढी कार्य से बचने के लिए यथास्थिति अपीलीय न्यायाधिकरण को एक अपील या केन्द्रीय सरकार को एक आवेदन किया जाता है।

In case of the order covers a number of order-in-Original, fee for each O.I.O. should be paid in the aforesaid manner notwithstanding the fact that the one appeal to the Appellate Tribunal or the one application to the Central Govt. As the case may be, is filled to avoid scriptoria work if excising Rs. 1 lacs fee of Rs.100/- for each.

- (4) न्यायालय शुल्कअधिनियम 1970 यथासंशोधित की अनुसूची-1 के अंतर्गत निर्धारित किए अनुसार उक्त आवेदन या मूलआदेश यथास्थिति निर्णयन प्राधिकारी के आदेश में से प्रत्येक की एक प्रतिपर रु.6.50 पैसे कान्यायालय शुल्क टिकट लगा होना चाहिए।

One copy of application or O.I.O. as the case may be, and the order of the adjournment authority shall a court fee stamp of Rs.6.50 paise as prescribed under scheduled-I item of the court fee Act, 1975 as amended.

- (5) इन ओर संबंधित मामलों को नियंत्रण करने वाले नियमों की ओर भी ध्यान आकर्षित किया जाता है जो सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्याविधि) नियम, 1982 में निहित है।

Attention is invited to the rules covering these and other related matter contended in the Customs, Excise & Service Tax Appellate Tribunal (Procedure) Rules, 1982.

- (21) सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण(सिस्टेट),के प्रतिअपीलो के मामले में कर्तव्यमांग(Demand) एवं दंड(Penalty) का 10% पूर्व जमा करना अनिवार्य है। हालांकि, अधिकतम पूर्व जमा 10 करोड़ रुपए है।(Section 35 F of the Central Excise Act, 1944, Section 83 & Section 86 of the Finance Act, 1994)

केन्द्रीय उत्पाद शुल्क और सेवाकर के अंतर्गत, शामिल होगा "कर्तव्य की मांग"(Duty Demanded)-

- (i) (Section) खंड 11D के तहत निर्धारित राशि;
- (ii) लिया गलत सेनवैट क्रेडिट की राशि;
- (iii) सेनवैट क्रेडिट नियमों के नियम 6 के तहत देय राशि.

⇒ यह पूर्व जमा 'लंबित अपील' में पहले पूर्व जमा की तुलना में, अपील' दाखिल करने के लिए पूर्व शर्त बना दिया गया है.

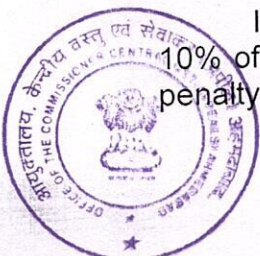
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited; provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (Section 35 C (2A) and 35 F of the Central Excise Act, 1944, Section 83 & Section 86 of the Finance Act, 1994).

Under Central Excise and Service Tax, "Duty demanded" shall include:

- (xlv) amount determined under Section 11 D;
- (xlvi) amount of erroneous Cenvat Credit taken;
- (xlvii) amount payable under Rule 6 of the Cenvat Credit Rules.

इस आदेश के प्रति अपील प्राधिकरण के समक्ष जहाँ शुल्क अथवा शुल्क या दण्ड विवादित हो तो माँग किए गए शुल्क के 10% भुगतान पर और जहाँ केवल दण्ड विवादित हो तब दण्ड के 10% भुगतान पर की जा सकती है।

In view of above, an appeal against this order shall lie before the Tribunal on payment of 10% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute."



ORDER-IN-APPEAL

The present appeal has been filed by M/s. Cera Sanitaryware Limited, GIDC, 9, 371/1 & 384, Taluka : Kadi, District : Mehsana, Gujarat – 382 715 (hereinafter referred to as the appellant) against Order in Original No. AC/M.P.Dabhi/24/CEX/KADI dated 25-11-2020 [hereinafter referred to as “*impugned order*”] passed by the Assistant Commissioner, CGST, H.Q., Commissionerate : Gandhinagar [hereinafter referred to as “*adjudicating authority*”].

2. Briefly stated, the facts of the case is that the appellant are engaged in providing service such as GTA, Scientific and Technical Consultancy, Sponsorship services which was provided to body corporate or firm, including sports sponsorship, Rent-a-Cab operator service etc. and are holding Service Tax Registration No. AABCM9244NST001. During the course of audit of the records of M/s.M.M.Publications Ltd., Kottayam, (hereinafter referred to as MMPL) it was observed by the officers of Audit Commissionerate, Cochin that every year MMPL had been organizing film award nights at various places styled as ‘Vanitha Film Award Night’ for which they were accepting sponsorship from various business entities, some of whom were located outside Kerala. The income from these sponsorship was recognized in the financial records as ‘Advertisement Income’. As per the sponsorship agreements, the consideration for sponsorship was mainly paid by way of space for advertisement in the print media owned by MMPL. As advertisement in print media is exempt from levy of service tax, this arrangement between the appellant and MMPL appeared to be a modus operandi to keep such income out of the purview of service tax. The office of Commissioner (Audit), Cochin sought verification w.r.t payment of service tax on sponsorship services provided by the appellant to MMPL.



2.1 The appellant was asked by the jurisdictional Range Superintendent to submit the related/relevant documents pertaining to sponsorship activities undertaken by them in respect of events organized by MMPL. The appellant submitted copies of the agreements entered into by them with MMPL, statements showing service tax paid and service tax not paid and reasons thereof viz. exempted or service tax not applicable, and copies of account ledger of MMPL for F.Y. 2014-15 to F.Y.2016-17. Investigation was initiated and statement of the Deputy General Manger of the appellant was recorded. He stated that they had not made any payment to MMPL towards sponsorship services. It was also stated by him that they had entered into an agreement with MMPL to take part in the Cera Vanitha Film Award because it was offered in lieu of fixed number of advertisement in their print media and that the sponsorship amount agreed upon was not paid by them.

2.2 Scrutiny of the documents submitted by the appellant indicated that they had not paid any service tax on Sponsorship services in respect of MMPL under reverse charge in terms of Section 68 (2) of the Finance Act, 1994 and Notification No.30/2012-ST dated 20.06.2012. As per Para 3 of the Agreements dated 26.12.2014, 14.01.2016, and 25.01.2017, the appellant agreed to be the title sponsor of film awards and MMPL agreed to provide the services, which typically constitute promotional activities for the sponsors covered under the definition of 'Sponsorship Services' as per Section 65 (99) (a) of the Finance Act, 1994. The agreed sponsorship amount was Rs.75,00,000/-, Rs.80,00,000/- and Rs.90,16,900/- as per Agreements dated 26.12.2014, 14.01.2016 and 25.01.2017 respectively.

2.3 It appeared that MMPL had provided services of sponsorship to the appellant for agreed sponsorship amount and, therefore, in terms of Section 68 (2) of the Finance Act, 1994, the appellant was liable to pay service tax. It appeared that the sponsorship amount is paid by way of



space for advertisement in the print media owned by MMPL. The appellant was issued Show Cause Notice bearing No. V.ST/03-01/Cera Sanitary Ware/2020-21 dated 08.04.2020 wherein it was proposed to demand and recover the service tax amounting to Rs.25,65,339/- under the proviso to Section 73(1) of the Finance Act, 1994 along with interest under Section 75 of the Finance Act, 1994. Imposition of Penalty was also proposed under Section 78 of the Finance Act, 1994.

3. The said SCN was adjudicated vide the impugned order wherein the demand for Service Tax was confirmed under Section 73 of the Finance Act, 1994 along with interest. Penalty equal to the service tax confirmed was also imposed under Section 78 of the Finance Act, 1994.

4. Being aggrieved with the impugned order, the appellant has filed the instant appeal on the following grounds :

- i. The impugned order has failed in addressing all the averments/defense arguments advanced in reply to the SCN. Their main arguments are : (i) No payment was made to MMPL towards sponsorship event and therefore, no demand of service tax can sustain on sponsorship service; (ii) They have never suppressed any fact/information from the departments as complete details of all the transactions were recorded in the books of accounts which were audited regularly by the department. Therefore, extended period of limitation cannot be invoked. (iii) The service tax of sponsorship service was available to them as Cenvat Credit and so it is revenue neutral and therefore, also extended period of limitation cannot be invoked.
- ii. Admittedly there is an agreement for sponsorship, but there is no transaction for sponsorship. No payment has been made to MMPL for sponsorship. There were many agreements between them and MMPL and one of them was sponsorship. In addition they had agreed with MMPL for exhibition events and publication of



advertisement also. The rates of advertisements in various publications were also fixed and the advertisements were released by them and published. Bills for the advertisements were raised and the same were paid by them.

- iii. They had through MMPL organized several exhibition events too and MMPL had raised bills for such events under Exhibition services and had charged service tax on the billed amount. It is to support that there were several agreements between them and MMPL and the bills were exactly as per the actual transaction of the service.
- iv. So, though there is agreement for sponsorship, as the same was not billed and paid at all, the question of payment of service tax on the amounts agreed for sponsorship service on reverse charge does not arise.
- v. They have repeatedly stated that no payment was made for sponsorship service but for advertising service. To agree and act are two different phenomena. Existence of a sponsorship agreement is a statement of fact and it is equally factual that no payment was made for sponsorship service.
- vi. Sponsorship activity is one and payment is made in single transaction, whereas regular publications of advertisements in different publications are not single transactions and several bills of different amounts are received for such advertisement.
- vii. Whether such advertisements were published by MMPL for free, of the payments were considered for sponsorship service? Without having found the facts, the adjudicating authority has termed such transaction as for sponsorship service only. In that sense, if the issue is considered as of interpretation of the activity undertaken by them, it cannot be viewed as malafide and there is not scope of invoking extended period of limitation as held in catena of decisions.
- viii. They rely upon the decision in the case of Adani Gas P. Ltd. – 2017 (349) ELT 349 in their support. All the information including



payments made to MMPL were recorded correctly in their books of accounts and the audit of their records was conducted regularly by the department, so there was no suppression of facts or mis-declaration and therefore, extended period cannot be invoked.

- ix. They are regularly filing ST-3 returns showing transactions of various taxable services including actual sponsorship services received by them and service tax was paid by them and availed as cenvat credit.
 - x. The adjudicating authority has missed their ground on the issue of revenue neutrality and limitation. The amount of service tax paid on RCM was available as cenvat credit and they could not have achieved any purpose to evade payment of service tax. They rely upon the decisions in the case of : (i) Jay Yuhshin Ltd. – 2000 (119) ELT 718 (Tri.-LB); (ii) Kitply Industries Ltd. – 2011 (267) ELT 289 (SC); (iii)AMCO Batteries Ltd.- 2003 (153) ELT 7 (SC); (iv) Reliance Industries Ltd. – 2016 (44) STR 82 (Tri.); (v) Vedanta Ltd.- 2019 (28) GSTL 258 (Tri.) and (vi) Asmitha Microfin Ltd. – 2020 (33) GSTL 250 (Tri.).
 - xi. The SCN issued on 08.04.2020 covering the period from F.Y. 2015-16 to 30.06.2017 was time barred and longer period of limitation under Section 73 of the Act was not applicable.
 - xii. The adjudicating authority has erred in imposing 100% penalty under Section 78 of the Act. All the information about the expenses were recorded in their books of accounts and there was no suppression in this regard. There cannot be malafide intent to evade payment of service tax when the same is available as cenvat credit. Penalty has been mechanically imposed without examining the aspect of revenue neutrality.
5. Personal Hearing in the case was held on 09.02.2022 through virtual mode. Shri K.J. Kinariwala, Consultant, appeared on behalf of the appellant for the hearing. He reiterated the submissions made in appeal memorandum. He stated that there was no payment for



sponsorship service. He also argued on limitation ground as audit of records was regularly undertaken. He further stated that he would make additional written submission based on which the case may be decided.

6. The appellant filed additional written submissions on 07.03.2022 wherein it was inter alia submitted that :

- Though there was an agreement for sponsorship service between them and MMPL, there was neither provision of the said service nor payment transaction on that account. No invoice has been received from MMPL for sponsorship service and therefore, the issue 'paid or payable' is out of place.
- No where in the contract there is any mention about any other service or free publication of advertisement in lieu of sponsorship service. They had received advertisement service separately for which there was separate invoice.
- Had there been intent to evade service tax, MMPL could have issued invoices in the name of advertising service even for the Event Management/Exhibition service received by them. They have paid more than Rs.50 lakhs during 2015-16 and more than Rs.65 lakhs during 2016-17 for exhibition service provided by MMPL.
- The alleged sponsorship service was never transacted, neither was there any invoice nor was any payment made for the service. Even from the records of MMPL neither any invoice nor income from sponsorship was found.
- For the sponsorship service received from other service providers, they had paid service tax and the same can be verified from their ST-3 returns.
- The entire demand for the period from 01.04.2015 to 30.06.2017 is time barred as there was no suppression of facts or mis-declaration and every transaction was recorded in their books which were regularly audited by the department. Service tax paid



on sponsorship service was available as cenvat credit. It is a revenue neutral case as held by the Apex Court. There was no malafide or intent to evade service tax.

7. I have gone through the facts of the case, submissions made in the Appeal Memorandum, submissions made at the time of personal hearing and additional written submissions as well as material available on records. The issues before me for decision are :

- A. Whether the appellant had received Sponsorship Service from MMPL ? and if so,
- B. Whether the appellant are liable to pay service tax on the sponsorship service received by them from MMPL?

7.1 I find that the demand pertains to the period from F.Y. 2015-16 to F.Y. 2017-18 (upto June, 2017). As the period of dispute is post 01.07.2012, the amended provisions of the Finance Act, 1994 are applicable. It is not disputed by the appellant that the service under dispute is 'Sponsorship Service'. In terms of Sr. No.3 of the Table to Notification No. 30/2012-ST dated 20.06.2012, 100% of the Service Tax is payable by the service recipient under reverse charge.

7.2 Prior to 01.07.2012, sponsorship service was defined under Section 65 (99a) of the Finance Act, 1994, the same is reproduced as under :

“ “sponsorship” includes naming an event after the sponsor, displaying the sponsor’s company logo or trading name, giving the sponsor exclusive or priority booking rights, sponsoring prizes or trophies for competition; but does not include any financial or other support in the form of donations or gifts, given by the donors subject to the condition that the service provider is under no obligation to provide anything in return to such donors;”.

Though with the onset of the Negative List of Service regime from 01.07.2012, the above section stands omitted, the import of the definition gives an understanding of the scope of the sponsorship services. Further, in the Negative List of Services regime, the



sponsorship service availed by the appellant is neither exempted under any Notification nor is it included in the Negative List of Services under Section 66D of the Finance Act, 1994. Further, as the appellant is a body corporate, they are liable to pay service tax on the sponsorship service under reverse charge in terms of Notification No. 30/2012-ST dated 20.06.2012.

7.3 I find that in terms of the agreement, the logo of the appellant was displayed in the event and the event was promoted using the name of the appellant. The appellant was also given the first right of refusal of the Title sponsorship of the event next year. Therefore, I find that the ingredients of the definition of sponsorship service have been satisfied in the instant case in as much as the event was named as 'CERA Vanitha Film Awards', and the logo of the appellant i.e. CERA was used for the event.

7.4 The appellant have mainly contended that though there was an agreement, there is no provision of sponsorship service, no invoice was issued to them by MMPL and no payment was made by them to MMPL. So, service tax is not leviable or payable by them in this regard. I find that the appellant had entered into three agreements – dated 26.12.2014, 14.01.2016 and 25.01.2017 with MMPL for sponsorship. The terms of these agreements have been substantially referred to in the SCN and the impugned order. Therefore, it is pertinent to refer to the terms of these agreements. On going these agreements, I find that the terms are all similarly worded, except for the dates, the amounts etc. To bring out the essence of the terms of these agreements, I refer to the Agreement dated 26.12.2014 and Para 3 and 4 of the said agreement is reproduced as under :

“3. CERA has agreed to be the Title Sponsor of the event including the awards ceremony and the total sponsorship amount for the program as agreed by CERA will be Rs. 75,00,000/- (Rupees SEVENTY FIVE LAKHS NET only).



4. In consideration of CERA being the Title Sponsor of the event organised by MMP, MMP assures CERA of the following :

4.i The integrated programme logo of CERA Vanitha Film Awards with CERA logo incorporated will be sent to CERA by MMP for prior approval.

4.ii CERA will be given the first right of refusal of the Title sponsorship for this event next year.

4.iii CERA will be given advertisements in Vanitha (M) & Vanitha Veedu magazines brought out by MMP. The releases under this agreement shall be consumed as per the following guidelines

4.iii.a The release of the advertisements under this agreement would commence from 1st April 2015.

4.iii.b The advertisements offered in these Publications shall be restricted to normal advertisement pages without premium positions.

4.iii.c The advertisement space under this agreement has to be utilized before 31st March 2016.

4.iii.d 32 full page colour space for advertisement in the Vanitha Magazine, which is published in Malayalam language. The pages shall be billed at Rs.1,96,350/- (Rupees One Lakh Ninety Six Thousand Three Hundred and Fifty Only) per page

4.iii.e 36 full page colour space for advertisement in the Vanitha Veedu Magazine, which is published in Malayalam language. The pages shall be billed at Rs.33,800/- (Rupees Thirty Three Thousand Eight Hundred Only) per page”.

.....
.....”

7.5 From the terms of the agreement it is evident that amount payable by the appellant for title sponsorship of the awards ceremony was Rs.75 lakhs. For the consideration to be paid by the appellant, they were given, in terms of the agreement, display of their logo in the event, promoting the event using the name of the appellant and also advertisements, of the appellant to be published in the print magazines of MMPL, the cost of which is specified in the agreement. The total value of the advertisements given by MMPL to the appellant in terms of the agreement amounts to Rs.75 lakhs, the details of which are as

under :



Publication in which the advertisement would be published	No. of Advertisements	Cost per Advertisement (in Rs.)	Total Cost of the Advertisements
Vanitha Magazine	32	1,96,350	62,83,200
Vanitha Veedu Magazine	36	33,800	12,16,800
TOTAL =	68		75,00,000

7.6 The appellant have also contended that no invoice was raised by MMPL and no payment was made by them towards the sponsorship. In this regard, I find that Para 5 of the above agreements deals with the manner of payment by the appellant towards the sponsorship amount. The said Para 5 is reproduced as under :

“5. The payment terms for the sponsorship amount as agreed by CERA will be as follows :

5.i Rs.5,00,000/- (Rupees Five Lakh Only) being the advance of the total sponsorship amount at the time of signing the agreement.

5.ii The balance sponsorship amount i.e. Rs. 70,00,000/- (Rupees Seventy Lakh Only) as and when the advertisements of CERA as per clause 4.iii under this agreement, are released in Vanitha (M) & Vanitha Veedu but before 31st March 2016.

5.iii CERA will release the payments for the sponsorship amount as per the above schedule.

5.iv CERA would pay the sponsorship amount i.e. Rs.70,00,000/- (Rupees Seventy Lakh Only) before 31st March 2016, irrespective of whether the advertisements as per clause 4.iii under this agreement are released in Vanitha (M) & Vanitha Veedi, or not.

5.v However, for the released made in February/March 2016 credit as per INS Terms will apply.”

7.7 It is evident from the terms of the agreement above that the appellant would pay an amount as advance towards the sponsorship amount at the time of signing of the agreement and the balance amount is to be paid upon release of the advertisement. Therefore, the payments made by the appellant to MMPL are not towards the cost of the advertisement published in the magazines of MMPL but towards



the cost of the sponsorship as is clearly stated in the terms of the agreement. This fact is further amplified by Para 5.iv of the said agreement which clearly stipulates that the appellant "*would pay the sponsorship amount*" before 31st March, 2016, irrespective of whether the advertisements, as per the agreement, are released in the magazines of MMPL, or not. All the contentions of the appellant regarding no sponsorship service being received by them, no invoice being issued by MMPL and no payment having been made by them towards sponsorship evaporate in the face of the overwhelming evidence in the form of the terms of the agreement entered into by the appellant with MMPL.

7.8 Further, I find that the claim of the appellant that no payment was made towards the title sponsorship to MMPL is also demolished by their own records which were submitted by them to the department. From the Ledger Account of MMPL maintained by the appellant, I find that the appellant had, in terms of their agreement with MMPL, made advance payment of Rs. 5,00,000/- to MMPL. The Ledger Entry is dated 29.04.2015 and the narration against the Entry states : " CHQ. NO. 402820 DT 29-04-15 RS 490000/- ISSUE TO M M PUBLICATIONS LTD AS ADVANCE RS 500000/- TDS RS.10000/- @2% FOR AGREEMENT". It is clearly forthcoming from this Ledger Entry that in terms of the sponsorship agreement between the appellant and MMPL, the advance payment as per Para 5.i of the agreement was made by the appellant to MMPL.

8. It, therefore, is very clear that the appellant had entered into an agreement for title sponsorship of the awards ceremony for an agreed amount and in terms of the agreement, the appellant received the service of title sponsor of the awards event as well as publishing of their advertisements in the publications owned by MMPL. The agreement nowhere states that the payments made by the appellant is towards the cost of publishing of their advertisements in the print media of MMPL.



However, the appellant, with the active assistance and connivance of MMPL, got invoices raised by MMPL purportedly towards the publishing of the advertisements of the appellant in print media. By resorting to this subterfuge, the appellant and MMPL have attempted to camouflage the service of sponsorship – a taxable service – as being that of publishing of advertisement in the print media – an exempted service. This clearly points towards the malafide intent of the appellant in evading service tax by attempting to colour the sponsorship service as an advertisement service.

8.1 In the facts of the instant case, I find it very relevant to refer to the judgment of the Hon'ble Supreme Court in the case of *Mc Dowell & Company Limited - 1985 SCR (3) 791*. In the said judgment, the Hon'ble Supreme Court had held that, Per Hon'ble Justice Chinnappa Reddy, :

“The proper way to construe a taxing statute, while considering a device to avoid tax, is not to ask whether the provisions should be construed literally or liberally, nor whether the transaction is not unreal and not prohibited by the statute, but whether the transaction is a device to avoid tax, and whether the transaction is such that the judicial process may accord its approval to it.

It is neither fair nor desirable to expect the legislature to intervene and take care of every device and scheme to avoid taxation. It is upto the Court to take stock to determine the nature of the new and sophisticated legal devices to avoid tax and consider whether the situation created by the devices could be related to the existing legislation with the aid of 'emerging' techniques of interpretation, to expose the devices for what they really are and to refuse to give Judicial benediction.”

8.2 Further, in the said judgment of the Hon'ble Supreme Court, Per Hon'ble Justice Ranganath Mishra, it was held that :

“Tax planning may be legitimate provided it is within the framework of law, Colourable devices cannot be part of tax planning and it is wrong to encourage or entertain the belief that it is honourable to avoid the payment of tax by resorting to dubious methods. It is the obligation of every citizen to pay the taxes honestly without resorting to subterfuges.”

8.3 Applying the observations of the Hon'ble Supreme Court in the above case, I find that the appellant and MMPL have attempted to



devise the sponsorship service in such a manner, by giving it the colour of advertisement in print media, so to avoid payment of service tax. As held by the Hon'ble Supreme Court, such an attempt cannot be permitted. As observed in the foregoing paragraphs, the evidences clearly indicate that the service received by the appellant was sponsorship service for which the appellant have made payment of the agreed amounts to MMPL. Therefore, I do not find any merit in the contentions of the appellant that they have neither received sponsorship service nor have they made any payment towards the same.

9. The appellant have also contested the demand on the issue of limitation on the grounds that they had declared all the facts to the department and that they were subjected to regular audit by the department. They have also contested the imposition of penalty under Section 78 of the Finance Act, 1994. These contentions of the appellant, in my considered opinion, do not have any legs to stand on in view of the fact that they had along with MMPL resorted to subterfuge and attempted to camouflage the sponsorship service received by them by camouflaging the consideration in the form of advertisement in print media, which is an exempted service. The appellant have at no point of time disclosed that they were having an agreement with MMPL and that in terms of the agreement amount agreed upon was paid by them to MMPL. The challenge on limitation cannot also be sustained in view of the malafide on the part of the appellant being established by their indulging in subterfuge to avoid payment of service tax on the sponsorship service received by them from MMPL. For the same reasons, the grounds raised by the appellant contesting the penalty imposed upon them is also not tenable or sustainable.

10. The appellant have also raised the issue of revenue neutrality and relied upon various decisions of the appellate authorities. However, I do not find any merit in the contention of the appellant inasmuch as



inspite of being aware that they were availing sponsorship services from MMPL and that service tax was payable on the same under reverse charge and that the service tax paid by them would be available to them as cenvat credit, the appellant chose to camouflage the sponsorship service received by them as purportedly being an advertisement service in print media, which is an exempted service. Having indulged in such shenanigans of subterfuge, the appellant cannot now seek shelter under the claim of revenue neutrality. Therefore, I reject the contention of the appellant as untenable.


11. I am, therefore, of the considered view that the appellant had received sponsorship service from MMPL for which payment was made by them to MMPL, in terms of the agreements. Therefore, the appellant are liable to pay service tax on the sponsorship service received by them in terms of Sr. No.3 of the Table to Notification No. 30/2012-ST dated 20.06.2012.

12. In view of the facts discussed herein above, I uphold the impugned order and the reject the appeal filed by the appellant.

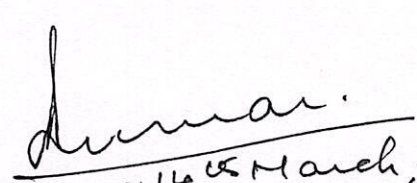
13. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।

The appeal filed by the appellant stands disposed off in above terms.

Attested:


(N.Suryanarayanan. Iyer)
Superintendent(Appeals),
CGST, Ahmedabad.

BY RPAD / SPEED POST


..14 March, 2022
(Akhilesh Kumar)
Commissioner (Appeals)
Date: .03.2022.



To

M/s. Cera Sanitaryware Limited,
GIDC, 9, 371/1 & 384,
Taluka : Kadi,
District : Mehsana,
Gujarat – 382 715

Appellant

The Assistant Commissioner,
CGST & Central Excise,
Division- Kadi,
Commissionerate : Gandhinagar

Respondent

Copy to:

1. The Chief Commissioner, Central GST, Ahmedabad Zone.
2. The Commissioner, CGST, Gandhinagar.
3. The Assistant Commissioner (HQ System), CGST, Gandhinagar.
(for uploading the OIA)

4. Guard File.
5. P.A. File.

