



केंद्रीय कर आयुक्त (अपील)



234 सत्यमेव जयते

O/O THE COMMISSIONER (APPEALS), CENTRAL TAX,

केंद्रीय उत्पाद शुल्क भवन,
सातवीं मंजिल, पोलिटेकनिक के पास,
आम्बावाडी, अहमदाबाद-380015

7th Floor, Central Excise Building,
Near Polytechnic,
Ambavadi, Ahmedabad-380015

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रजिस्टर डाक ए.डी.द्वारा

क फाइल संख्या (File No.): **V2(ST)234/A-II/2016-17/1374 to 1378**
स्थगन आवेदन संख्या (Stay App. No.):
ख अपील आदेश संख्या (Order-In-Appeal No.): **AHM-EXCUS-002-APP-101-17-18**
दिनांक (Date): **25/09/2017**, जारी करने की तारीख (Date of issue): _____
श्री उमा शंकर, आयुक्त (अपील-II) द्वारा पारित
Passed by **Shri Uma Shanker**, Commissioner (Appeals)

ग _____ आयुक्त, केंद्रीय उत्पाद शुल्क, (मंडल-I), अहमदाबाद, आयुक्तालय द्वारा जारी
मूल आदेश सं----- दिनांक -----से सृजित
Arising out of Order-In-Original No. **SD-01/08/AC/Saket/2016-17** Dated: **29.11.2016**
issued by: Assistant Commr STC(Div-I), Ahmedabad.

घ अपीलकर्ता/प्रतिवादी का नाम एवम पता (Name & Address of the Appellant/Respondent)

M/s Saket Project Ltd

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) (क) (i) केंद्रीय उत्पाद शुल्क अधिनियम 1994 की धारा अतत नीचे बताए गए मामलों के बारे में पूर्वोक्त धारा को उप-धारा के प्रथम परंतुक 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।

A revision application lies to the Under Secretary, to the Government of India, Revision Application Unit, Ministry of Finance, Department of Revenue, 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi-110001, 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 हानि कारखाने से किसी भंडारगार या अन्य कारखाने में या किसी भंडारगार से दूसरे भंडारगार में माल ले जाते हुए मार्ग में, या किसी भंडारगार या भंडार में चाहे वह किसी कारखाने में या किसी भंडारगार में हो माल की प्रक्रिया के दौरान हुई हो।

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

(ख) 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 मामले में जो भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित हैं।



- (c) 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।

- (d) 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 भीतर मूल-आदेश एवं अपील आदेश की दो-दो प्रतियों के साथ उचित आवेदन किया जाना चाहिए। उसके साथ खाता इ. का मुख्यशीर्ष 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 हो तो रुपये 200/- फीस भुगतान की जाए और जहाँ संलग्न रकम 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 सेवाकर 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 :-

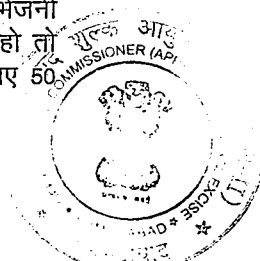
- (क) वर्गीकरण मूल्यांकन से संबंधित सभी मामले सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण की विशेष पीठिका वेस्ट ब्लॉक नं. 3. आर. के. पुरम, नई दिल्ली को एवं

- (a) the special bench of Custom, Excise & Service Tax Appellate Tribunal of West Block No.2, R.K. Puram, New Delhi-1 in all matters relating to classification valuation and.

- (ख) उक्तलिखित परिच्छेद 2 (1) क में बताए अनुसार के अलावा की अपील, अपीलों के मामले में सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, अहमदाबाद में ओ-20, न्यू मैटल हास्पिटल कम्पाउण्ड, मेघानी नगर, अहमदाबाद-380016.

- (b) To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at O-20, New Metal Hospital Compound, Meghani Nagar, Ahmedabad : 380 016. in case of appeals other than as mentioned in para-2(i) (a) above.

- (2) केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001 की धारा 6 के अंतर्गत प्रपत्र इए-3 में निर्धारित किए अनुसार अपीलीय न्यायाधिकरणों की गई अपील के विरुद्ध अपील किए गए आदेश की चार प्रतियों सहित जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग और लगाया गया जुर्माना रूपए 5 लाख या उससे कम है वहां रूपए 1000/- फीस भेजनी होगी। जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग और लगाया गया जुर्माना रूपए 5 लाख या 50 लाख तक हो तो रूपए 5000/- फीस भेजनी होगी। जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग और लगाया गया जुर्माना रूपए 50 लाख या उससे ज्यादा है वहां रूपए 10000/- फीस भेजनी होगी। की फीस सहायक रजिस्टार के नाम से



रेखांकित बैंक ड्राफ्ट के रूप में संबंध की जाये। यह ड्राफ्ट उस स्थान के किसी नामित सार्वजनिक क्षेत्र के बैंक की शाखा का हो जहाँ उक्त न्यायाधिकरण की पीठ स्थित है।

The appeal to the Appellate Tribunal shall be filed in quadruplicate in form EA-3 as prescribed under Rule 6 of Central Excise(Appel) 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 Appellant 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 शुल्क अधिनियम 1970 यथा संशोधित की अनुसूची-1 के अंतर्गत निर्धारित किए अनुसार उक्त आवेदन या मूल आदेश यथास्थिति निर्णयन प्राधिकारी के आदेश में से प्रत्येक की एक प्रति पर रु.6.50 पैसे का न्यायालय 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 हैं।

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

- (6) सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट), के प्रति अपील के मामले में कर्तव्य मांग (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 सेवा कर 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. 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:

- (i) amount determined under Section 11 D;
- (ii) amount of erroneous Cenvat Credit taken;
- (iii) amount payable under Rule 6 of the Cenvat Credit Rules.

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

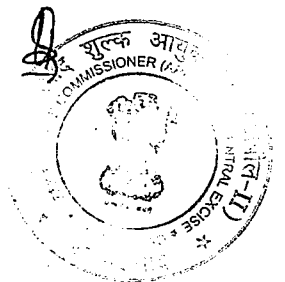
In view of above, an appeal against this order shall lie before the Tribunal on payment of 10% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute."



ORDER-IN-APPEAL

M/s Saket Projects Ltd., Saket House, 1 Panchsheel, Usmanpura Ahmedabad (hereinafter referred to as 'the appellant') has filed the present appeal against **Order-in-original No.SD-01/08/AC/Saket/2016-17 dated 29/11/2016** (hereinafter referred to as 'the impugned order') passed by Assistant Commissioner, Division-I, Ahmedabad (hereinafter referred to as 'the adjudicating authority').

2. Briefly stated the facts of the case are that the appellant is holding Service Tax registration No.AACCS6912JST001 and is providing taxable services under various categories and paying Service Tax on Management Consultant Services and Event Management Services. During the course of audit of the records of the appellant it was observed that as per the financial records the appellant had received certain incomes on which no Service Tax had been paid. On investigation it was noticed that the appellant was publishing magazines such as 'Textile review', 'Steam and Boiler review' and 'Indian Port & Infrastructure Review', which were all registered with 'Office of the Registrar of News Papers for India, New Delhi. The appellant was also organizing exhibitions, conferences and seminars on various relevant issues and collecting various charges for such activities namely advertisement charges, delegation fees, participation charges, sponsorship charges, stall charges etc. Several periodic show cause notices were issued, which were adjudicated confirming demands, interest and penalties as proposed therein. The periodic show cause notice being considered in the instant case is show cause notice F.No.SD-01/04-136/SCN/Saket/2015-16 dated 18/03/2016 (hereinafter referred to as 'the SCN'), where a total demand for **Rs.4,16,902/- (Rs2,43,862/- towards Advertisement Income and Rs.1,73,040/- towards Sponsorship received from others)** for the period **2014-15** has been raised under Section 73(1A) of the Finance Act, 1994 (hereinafter 'F.A., 1994'); an amount of Rs1,73,040 deposited by the appellant under protest was proposed to be appropriated ; demand for interest was raised under Section 75 of the F.A., 1994 and penalties were proposed to be imposed on the appellant under Section 76 and Section 77 of the F.A., 1994. The SCN has been adjudicated *vide* the impugned order holding that the services provided by the appellant in respect of advertisement in their magazines / publications / books / periodicals have been confirmed as taxable service under the category of 'Sale of Space or Time for Advertising Service' as specified in clause (zzzm) of Section 65(105) of the F.A., 1994 and the value of Rs.19,73,000/- has been considered as taxable value and the demand for Service Tax thereon amounting to Rs.2,43,862/- has been ordered to be recovered under Section 73 of the F.A., 1994. Similarly, the income shown under the head 'Sponsorship received from others' has been confirmed as taxable income under taxable service of 'Sponsorship service' as specified in clause (zzzn) of Section 65(105) of the F.A., 1994 and the value of Rs.14,00,000/- has been considered as taxable value and the

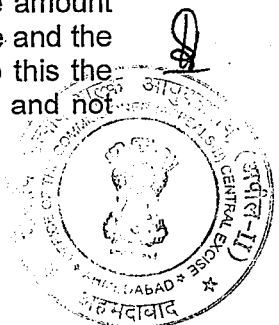


demand for Service Tax thereon amounting to Rs.1,73,040/- has been ordered to be recovered under Section 73 of the F.A., 1994. The amount of Rs.1,73,040/- paid by the appellant has been appropriated and adjusted against the confirmed demand; Interest on the confirmed demands has been confirmed under Section 75 of the F.A., 1994 and penalties of Rs.41,690/- has been imposed on the appellant under Section 76 (1) of the F.A., 1994 and a penalty of Rs.10,000/- has been imposed on the appellant under Section 77 of the F.A., 1994 in the impugned order.

3. Aggrieved with the impugned order, the appellant has filed the instant appeal mainly on the following grounds:

1) The impugned order is bad in law, not sustainable and the findings are contrary to established law and the same is required to be set aside as the facts of the are not correctly appreciated in true spirit. The SCN was issued mechanically on presumptions based on audit observations, without application of mind to the relevant facts under dispute. As regards confirmation of the demand of Service Tax in respect of 'Sale of space or time for advertisement' under Section 65(105)(zzzm) of the F.A., 1994, the impugned order has not correctly appreciated that the magazines published by the appellant are 'Books' and the same cannot be classified as trade catalogues or business directories and were not in the nature of directories, yellow pages and trade catalogues. In all such magazines, the appellant was providing latest, precise and most authenticated information on the events taking shape on the industrial / economic landscape of the country and towards this objective the editorial-mix of the magazine is conceived in form of a news capsule so that, it meets with the expectations of its readership. The magazines, therefore, are conceived as niche magazines related to the corporate and commercial nature. The adjudicating authority had erred in holding that the business directory / trade catalogue was being published in a book form and therefore, cannot escape taxability in the guise of being a 'book' as defined in sub-section (1) of section 1 of the Press and Registration of Book Act, 1867 (25 of 1867). 'Book' includes every volume, part or division of a volume and pamphlet, in any language and every sheet of music, map, chart or plan separately printed under the Press and Registration of Book Act, 1867 (PRB Act). The publications of the appellant are not at all in the form of any business directory, yellow pages and trade catalogues, which are covered for levy of Service Tax. It will be incorrect to say that the publications of the appellant are 'business directories, yellow pages and trade catalogues which are primarily meant for commercial purposes.

2) As regards 'Sponsorship services', the burden is cast upon revenue to prove that the entries are covered under definition of 'Body Corporate' and hence the liability to pay Service Tax as per Rule 2(1)(d)(i)(C) of the Service Tax Rules, 1994 in relation to service provided or agreed to be provided by way of sponsorship to any body corporate or partnership firm located in the taxable territory is the recipient of such service. Thus service tax liability is not on the appellant. The impugned order has not correctly appreciated that a 'body corporate' is also an 'Association of Persons', but has identity separate and independent of its members. A body corporate is an association or group of persons, legally incorporated under some statute having perpetual succession, a common seal and having a legal entity different from its members. Therefore, all the 8 entities referred in the SCN / impugned order have been created by law and hence they are all body corporate. There is no service tax liability on the appellant for such body corporate and the amount of Rs.14,00,000/- received from the entities which are body corporate and the demand in this regard is liable to be set aside. Without prejudice to this the simple contention is that service tax is payable on amount received and not

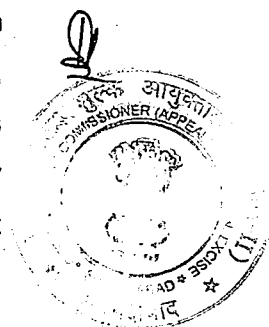


the amount billed, which has not been correctly appreciated in the impugned order. There is no dispute by the appellant that Service Tax is on the gross amount charged. However, when amount charged is received in the next financial year and payments of the service tax to credit of Government proportionate to amount received from their clients on receipt of amount within stipulated time in accordance with Rule 6 of Service Tax Rules, 1994.

- 3) The appellant submits that they are not liable to penalty under Section 76 of the F.A., 1994. They had not suppressed any facts or value of taxable services. They had established their *bona fide* intentions and deposited service tax, filed ST-3 returns and there was no case even to confirm demand and hence penalty under Section 76 was not imposable. Service Tax is leviable on service providers on value of taxable service provided for consideration. However, the liability to pay amount of service tax to Government is deferred until the amount of taxable value of services rendered is received. The appellant had made payments of service tax to credit of Government proportionate to amount received from their clients for services, in accordance with Rule 6 of Service Tax Rules, 1994. Without prejudice to above submission, it is further submitted that even if service tax is payable by appellant to Government of India, the value of taxable service requires to be considered as cum-tax value, as such demand of service tax is raised only after providing services and accounts have been settled and the appellant is not likely to receive any such amount of service tax in question from the persons from whom they had received such amount initially while finalizing the transaction. As there is no further payment to be received and the books of accounts are closed and hence the amounts received have to be treated as 'cum-tax-value' even if service tax is held as payable. This view is supported by judicial decision in case of M/s Advantage Media Consultants – 2008 (10) STR – 449 (Tri.-Kolkata) and maintained by Hon'ble S.C. as reported in 2009 (14) S.T.R. J49 (S.C.). Further, the appellant relies of decision of Apex Court in the case of 2008 (224) E.L.T 180 (SC) – CCE vs DUGAR TETENAL INDIA LTD. AND 2007 (210) E.L.T. 183 (S.C.) – AMRIT AGRO INDUSTRIES LTD. vs. CCE. Assuming without admitting that even if service tax is payable by appellant to the credit of Government of India, CENVAT credit of input services is required to be allowed. In support of their contention that Service Tax has to be paid when the actual recoveries are made, the appellant relies on 2007 (6) STR – 181 – Alpa Management Consultant Pvt. Ltd. vs Commissioner, S.T., Bangalore; 2007 (5) STR 312 - Tempest Advertising Pvt. Ltd. vs Commissioner and 2007 (4) STR 307 – BPL Ltd. vs Commissioner Service Tax, Bangalore. Thus total Service Tax amount of Rs.4,16,902/- ordered to be short paid during the period from F.Y. 2014-15 cannot be recovered u/s 73(1) of the F.A., 1994 with interest and penalties as ordered. The instant case is simply a case of interpretation of provisions of the law and not a case of evasion of Service Tax with *mala fide* intention. Non-payment of service tax related to interpretation of beneficial provisions and non liability has been held to be a reasonable cause or reason under Section 80 of F.A., 1994 for waiver of penalty u/s 76, 77 and 78 of F.A., 1994.

4. Personal hearing was held on 14/09/2017. Shri P.P. Jadeja, Authorized Representative appeared for personal hearing and reiterated the grounds of appeal and submitted that there was an O.I.A. for earlier against the party.

5. I have carefully gone through the contents of the impugned order as well as the grounds of appeal filed by the appellant. The appellant had preferred appeals in respect of the issues covered in the instant order i.e. demand for Service Tax, interest and penalties in respect of '**Sale of space or time for advertisement**' as well as '**Sponsorship services**', pertaining to earlier periods, which are already decided by me. The appellant has not adduced any new grounds in the instant



appeal as compared to their appeals for the earlier periods. It is pertinent to note that by virtue of Section 66D of Finance Act, 1994 inserted in Finance Act, 1994 by Finance Act of 2012 and notified w.e.f. 01/07/2012 *vide* Notification No. 19/2012-ST dated 05/06/2012, a Negative List was introduced specifying the services that will not be subject to Service Tax, implying that all services other than services contained in the said Negative List are taxable services w.e.f. 01/07/2012 irrespective of their classification. The period covered in the instant appeal is **2014-15**. Further, the impugned services also do not fall under the category of exempted services by virtue of any exemption Notification. In the light of these facts, I proceed herein below to discuss the findings in the impugned order and the averments made by the appellant in respect of the impugned services individually.

6. With regards to the demand of Service Tax under the taxable category of "Sale of space or time for advertisement", the chief contention of the appellant is that the printing of books and sale of space under such a print media falls under the exclusion clause of its definition under Section 65(105)(zzzm) of the F.A., 1994. The relevant extract of the definition is reproduced below.

Section 65

(105) "taxable service" means any [service provided or to be provided], -

(zzzm) to any person, by any other person, in relation to sale of space or time for advertisement, in any manner; **but does not include sale of space for advertisement in print media** and sale of time slots by a broadcasting agency or organisation.

Explanation 1. — For the purposes of this sub-clause, "sale of space or time for advertisement" includes, —

- (i) 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 albums, or on billboards, public places, buildings, conveyances, cell phones, automated teller machines, internet;
- (ii) selling of time slots on radio or television by a person, other than a broadcasting agency or organisation; and
- (iii) aerial advertising.

[**Explanation 2.** — For the purposes of this sub-clause, "print media" means,

- (i) "newspaper" as defined in sub-section (1) of section 1 of the Press and Registration of Books Act, 1867 (25 of 1867);
- (ii) "book" as defined in sub-section (1) of section 1 of the Press and Registration of Books Act, 1867 (25 of 1867), **but does not include business directories, yellow pages and trade catalogues which are primarily meant for commercial purposes;**]

The appellant has contended that their publication, with regards to which the demand has been confirmed in the impugned order, falls under the category of 'book' other than 'business directories, yellow pages and trade catalogues which are primarily for commercial purposes' as contained in Explanation 2(ii) of Section 65(105)(zzzm) *supra*. On this ground the appellant has claimed that their publication,



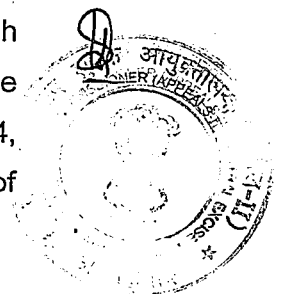
falls under the exclusion clause of the definition under Section 65(105)(zzzm) of the F.A., 1994. Further the appellant has also contended that that their publications are registered with Press and Registration of Books Act, 1867 (25 of 1867) and hence the exclusion clause applies to them in this case and thus provides them immunity from payment of Service Tax. The adjudicating authority on the other hand has relied on the amendment of the definition of taxable service "Sale of space or time for advertisement" w.e.f 01/06/2007 specifically excluding business directories, yellow pages and trade catalogues **which are primarily meant for commercial purposes** from the definition of 'Book'. The amendment with regards to 'Sale of space or time for advertisement' has been incorporated in paragraph 7.1 of Circular No. D.O.F. No. 334/1/2007-TRU, dated 28-2-2007, which is as follows:

7.1 Sale of space or time for advertisement [section 65(105)(zzzm) :

Definition of the term "Book" is being amended so as to exclude **business directories, yellow pages and trade catalogues which are primarily meant for commercial purposes** from the scope. Consequently sale of space for advertisement in such publications will also be leviable to service tax under this service.

The adjudicating authority has held that the said publications are not in the nature of any philanthropic activity but are primarily meant for commercial activity and hence even if published in the form of a book does not fall under the definition of 'Book'. The appellant has never denied the fact that the publications are commercial in nature and that the space for advertisement in such publications was provided in exchange of commercial consideration. There is no scope under Section 65 (105) (zzzm) to exclude publications merely on the ground that they are registered with Press and Registration of Books Act, 1867 (25 of 1867). As long as the said publications are primarily meant for commercial purposes they are excluded from the definition of 'Book' under explanation 2(ii) to Section 65 (105) (zzzm) of the F.A., 1994. Therefore, I find that the demand for Service, interest and the imposition of penalty with regard to 'Sale of space or time for advertisement' is legally sustainable and is liable to be upheld.

7. Now considering the demand of Service Tax under the head of "Sponsorship Service" as specified in clause (99a) read with sub-clause (105)(zzzn) of Section 65 of the F.A., 1994, the appellant has not disputed the nature of service provided by them or the fact that the said services are taxable. However, they have contended that the onus was on Revenue to prove that the entities covered in the SCN are not body corporate or partnership firms. This is in terms of Rule 2(1)(d)(i)(C) of the Service Tax Rules, 1994 which stipulates that the person liable to pay tax on sponsorship service defined under Section 65(105)(zzzn) is the recipient when the service is provided to a body corporate or a partnership firm. In paragraph 23(v)&(vi) of the impugned order the adjudicating authority has vividly discussed the definition of Body Corporate stating that as per Section 65(14) of the F.A., 1994, 'Body Corporate' has the same meaning assigned to it in clause (7) of Section 2 of



the Companies Act, 1956. The adjudicating authority has concluded that the four entities covered in the instant case were neither Individual / HUF / Firm / Trust / AOP / BOI / Registered or unregistered society nor were these entities any company registered under Company Act, 2003 and thus these entities were not body corporate. The appellant has not succeed in refuting this finding and provide evidence to their claim that person liable to pay Service Tax was the recipient of 'sponsorship service'. The onus is on the appellant to prove that tax payable was by the recipient of the service by adducing evidence that the recipients were 'body corporate' or partnership firms. However, the appellant has refused their onus and shifted the onus was on to the department. In view of this, the demand for Service Tax confirmed in the impugned order under the category of sponsorship service specified in Section 65(105)(zzzn) of the F.A., 1994 is correct and legally justified. As the demand is correct, the levy of interest and the imposition of penalty are also correct and justified.

8. On considering the claim of the appellant that even if Service Tax was payable, they were eligible for the benefit of cum-tax value, I find that Section 67(2) of the Finance Act, 1994 stipulates as follows:

“Section 67(2). Where the gross amount charged by a service provider, for the service provided or to be provided is **inclusive of service tax payable**, the value of such taxable service shall be such amount as, with the addition of tax payable, is equal to the gross amount charged.”

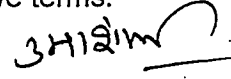
When the claim for cum-tax value is seen in the light of the above stipulation, the appellant have only stated that as there was no further payment to be received and the books of accounts were closed in relation to their clients, the amounts received have to be treated as 'cum-tax' value. They have not explained the component of Service Tax in the invoices issued by them nor segregated the tax component in the gross receipt. When the appellant claims the benefit of cum-tax, the onus to prove that the gross amount charged by them was inclusive of Service Tax payable is squarely on them. It is not the claim of the appellant that they had produced any evidence before the adjudicating authority that was not considered or taken into account in the impugned order. Even in the grounds of appeal, the appellant has not adduced evidence to show that the gross amount charged by them was inclusive of Service Tax. In this regard I find that the adjudicating authority has correctly relied upon the decision of Hon'ble Tribunal in the case of Shakti Motors vs Commissioner of Service Tax, Ahmedabad – 2008 (12) S.T.R. 710 (Tri.-Ahmd.), where it has been held that if the invoice does not specifically say that the gross amount charged include Service Tax or if there is no evidence showing how the invoice was prepared including tax component then it cannot be treated as cum-duty price. Accordingly, I reject the claim of cum duty price in the instant appeal.



9. Now coming to the penalties imposed under the impugned order, I find that the appellant has failed to assess the taxable services rendered by them and pay the due Service Tax under the taxable categories as discussed above, thereby contravening provisions of Section 68 of the F. A. 1994 read with Rule 6 of the Service Tax Rules, 1994. Therefore, penalty under Section 76 of the F. A., 1994 imposed in the impugned order is justified and sustainable. It is also undisputed that the appellant had not filed service tax returns in respect of 'Sale of Space or Time for Advertisement services' as well as 'Sponsorship services' provided by them during 2014-15. Therefore penalty under Section 77 of the F.A., 1994 is also correctly imposed in the impugned order. As regards, the plea of the appellant for invoking provisions of Section 80 of F.A., 1994 to set aside the penalties, I find that the appellant did not have any justifiable ground to continue avoiding payment of service tax and avoid filing of returns in relation to the said services, especially when the earlier appellate orders were not in their favour. There is no justifiable reason to invoke the provisions of Section 80 of F.A., 1994 in the present case.

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

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




(उमा शंकर)

आयुक्त

केन्द्रीय कर (अपील्स)

Date: 25/8/2017

Attested


(K.P. Jacob)
Superintendent,
Central Tax (Appeals),
Ahmedabad.

By R.P.A.D.

- 1) To
M/s Saket Projects Ltd.,
Saket house, 1 Panchseel,
Usmanpura, Ahmedabad.

Copy to:

1. The Chief Commissioner of C.G.S.T., Ahmedabad.
2. The Commissioner of C.G.S.T., Ahmedabad (North).
3. The Additional Commissioner, C.G.S.T (System), Ahmedabad (North).
4. The A.C / D.C., C.G.S.T Division: II, Ahmedabad (North).
- ✓ 5. Guard File.
6. P.A.

