

crossed bank draft in favour of the Assistant Registrar of the bench of nominated Public Sector Bank of the place where the bench of Tribunal is situated.

(iii) वित्तीय अधिनियम, 1994 की धारा 86 की उप-धाराओं एवं (2ए) के अंतर्गत अपील सेवाकर नियमावली, 1994 के नियम 9 (2ए) के अंतर्गत निर्धारित फार्म एस.टी.-7 में की जा सकेगी एवं उसके साथ आयुक्त, केन्द्रीय उत्पाद शुल्क (अपील) के आदेश की प्रतियाँ (OIA) (उसमें से प्रमाणित प्रति होगी) और अपर आयुक्त, सहायक / उप आयुक्त अथवा A219k केन्द्रीय उत्पाद शुल्क, अपीलीय न्यायाधिकरण को आवेदन करने के निदेश देते हुए आदेश (OIO) की प्रति भेजी होगी।

(iii) The appeal under sub section (2A) of the section 86 the Finance Act 1994, shall be filed in Form ST-7 as prescribed under Rule 9 (2A) of the Service Tax Rules, 1994 and shall be accompanied by a copy of order of Commissioner Central Excise (Appeals)(OIA)(one of which shall be a certified copy) and copy of the order passed by the Addl. / Joint or Dy. /Asstt. Commissioner or Superintendent of Central Excise & Service Tax (OIO) to apply to the Appellate Tribunal.

2. यथासंशोधित न्यायालय शुल्क अधिनियम, 1975 की शर्तों पर अनुसूची-1 के अंतर्गत निर्धारित किए अनुसार मूल आदेश एवं स्थगन प्राधिकारी के आदेश की प्रति पर रु 6.50/- पैसे का न्यायालय शुल्क टिकट लगा होना चाहिए।

2. One copy of application or O.I.O. as the case may be, and the order of the adjudication authority shall bear a court fee stamp of Rs.6.50 paise as prescribed under Schedule-I in terms of the Court Fee Act, 1975, as amended.

3. सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्यविधि) नियमावली, 1982 में वर्णित एवं अन्य संबंधित मामलों को सम्मिलित करने वाले नियमों की ओर भी ध्यान आकर्षित किया जाता है।

3. Attention is also invited to the rules covering these and other related matters contained in the Customs, Excise and Service Appellate Tribunal (Procedure) Rules, 1982.

4. सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय प्राधिकरण (सीस्तेत) के प्रति अपीलों के मामलों में केन्द्रीय उत्पाद शुल्क अधिनियम, 1984 की धारा 35फ के अंतर्गत वित्तीय(संख्या-2) अधिनियम 2014(2014 की संख्या 29) दिनांक: 06.08.2014 जो की वित्तीय अधिनियम, 1984 की धारा 23 के अंतर्गत सेवाकर को भी लागू की गई है. द्वारा निश्चित की गई पूर्व-राशि जमा करना अनिवार्य है, बशर्ते कि इस धारा के अंतर्गत जमा की जाने वाली अपेक्षित देय राशि दस करोड़ रूपए से अधिक न हो

केन्द्रीय उत्पाद शुल्क एवं सेवाकर के अंतर्गत " माँग किए गए शुल्क " में निम्न शामिल हैं -

- (i) धारा 11 डी के अंतर्गत निर्धारित रकम
- (ii) सेनवैट जमा की ली गई गलत राशि
- (iii) सेनवैट जमा नियमावली के नियम 6 के अंतर्गत देय रकम

⇒ आगे बशर्ते यह कि इस धारा के प्रावधान वित्तीय (सं. 2) अधिनियम, 2014 के आरम्भ से पूर्व किसी अपीलीय प्राधिकारी के समक्ष विचाराधीन स्थगन अर्ज़ी एवं अपील को लागू नहीं होगा।

4. For an appeal to be filed before the CESTAT, it is mandatory to pre-deposit an amount specified under the Finance (No. 2) Act, 2014 (No. 25 of 2014) dated 06.08.2014, under section 35F of the Central Excise Act, 1944 which is also made applicable to Service Tax under section 83 of the Finance Act, 1994 provided the amount of pre-deposit payable would be subject to ceiling of Rs. Ten Crores,

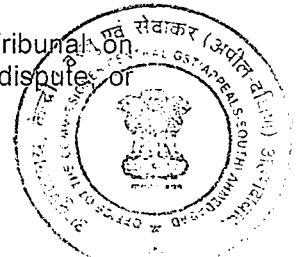
Under Central Excise and Service Tax, "Duty demanded" shall include:

- (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.

⇒ Provided further that the provisions of this Section shall not apply to the stay application and appeals pending before any appellate authority prior to the commencement of the Finance (No.2) Act, 2014.

4(1) इस संदर्भ में, 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।

4(1) 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

This is an appeal filed by M/s ABC Air Travels/Advertising Agency, Ahmedabad (herein after referred to as the appellants) against the OIO No. AHM-SVTAX-000-JC-013-16-17 dtd. 26.08.2016 (herein after referred to as the impugned order) passed by the Jt. Commissioner, Service Tax, Ahmedabad (herein after referred to as the adjudicating authority).

2. The brief facts of the case are that an inquiry was initiated against the appellants registered with the Service Tax department under the category of 'Business Auxiliary Service' and 'Air Travel Agent Service'. It was found that the appellants were engaged in providing the said services from the year 2008-09 to 2013-14. It was noticed that a new proprietorship concern was being run under a different proprietor w.e.f. 2014-15 and the service tax registration was obtained on 15.10.2014. It was found that the appellants had filed ST-3 returns and discharged service tax liability upto 2007-08. However, no return was filed thereafter and there was no service tax liability from 2008-09 since there was no business from the year 2008-09. On scrutiny of the IT returns, ST-3 returns for the period from 2006-07 to 2007-08 along with Balance Sheet, Profit & Loss Account and Bank Statement for the year 2010-11 to 2013-14, it was revealed that the appellant were providing the services under the category of 'Business Auxiliary Service' and 'Advertising Agency' which was taxable but they had not filed the ST-3 returns and had not paid applicable service tax of Rs. 15,61,020/-. Accordingly, a show cause notice dtd. 19.10.2015 under Section 73 (1) of the Finance Act, 1994 ("the Act" for brevity) was issued to the appellants for demanding the service tax along with interest and proposal for imposing penalty. The adjudicating authority, after having considered their defence arguments and case records, confirmed the demand of service tax of Rs. 15,61,020/- along with interest and also imposed penalty of equal amount under Section 78 and of Rs. 10,000/- under Section 77 (2) of the Act.

3. Being aggrieved by the impugned order, the appellants have filed this appeal on the following grounds:

- a) That as per definition given in Section 65A of the Act, their service income can be classifiable as "Business Auxiliary Service" and accordingly, the confirmation of demand on the basis that service falls in or is classifiable under the "Advertising Agency Service" is not sustainable;
- b) That they are engaged in rendering "Advertising Agency Service" to their various clients as per their requests and they place the



advertisements on their behalf in various print media and electronic media and the print media in which the advertisement is to be placed, duration and size are also decided by the clients;

- c) That they have not rendered any service to the print media and at the end of the year, some of the media give an incentive/discount to the appellants which is in the nature of a gratuitous payment;
- d) The appellants sought support from the following case laws:

Selvel Media Services P. Ltd. Vs. Commissioner of S.T., Delhi-III – 2016 (41) STR-670 (Tri.-Del.), Greater Hyderabad Municipal corp. Vs. C.C.E. & C.C., Hyderabad-I- 2015 (40) STR-937(Tri.Bang.), Needwise Advertising Pvt. Ltd. Vs. Commissioner of S.T., Ahmedabad- 2011(21) STR-229 (Tri.Ahm.); Prithvi Associates vs. C.C.E.-Mumbai -2006 (1) STR – 32 (Tri.Mum), Euro RSCG Advertising Ltd., P.Ramesh vs. C.C.E., Madurai – 2014 (34) STR-386 (Tri.Che.), Fifth Estate Communications (P) Ltd. Vs. Commissioner of S.T, Chennai- 2008 (12) STR-352 (Tri.Che.), Maulis Advertising Services Pvt. Ltd. Vs. Commissioner of S.T, Chennai- 2008 (12) STR-225 (Tri.Che.), Everest Brand Solution P. Ltd. Vs. Commissioner of S.T., New Delhi-2013 (32) STR-216 (Tri.-Del.), Grey Worldwide (I) Pvt. Ltd. vs. Commissioner of S.T.-Mumbai -2015 (37) STR – 597 (Tri.-Mum), Hindustan Steel Ltd. Vs. The State of Orissa reported in AIR 1970 (SC) 253 and many others.

4. The personal hearing in the case was held on 08.11.2017 in which Shri Vipul Khandhar, Chartered Accountant appeared on behalf of the appellants. They reiterated the grounds of appeal and pleaded that all invoices were submitted which have not been considered by the adjudicating authority. He also made additional written submission. In the written submission, they have elaborated the definition of Business Auxiliary Service and have submitted a copy of CBEC letter F. No. 341/43/96-TRU dtd. 31.10.1996 and CBEC letter F. No. 341/43/2001-TRU dtd. 18.10.2001. They also submitted copies of the following case laws cited by them in their support:

P. Ramesh vs. Commissioner of Central Excise, Madurai – 2014 (34) S.T.R. 386 (Tri.Chennai), Fifth Estate Communications P. Ltd. vs. Commissioner of Service Tax, Chennai – 2008 (12) S.T.R. 352 (Tri.Chennai), maulis Advertising Services P. Ltd. vs. Commissioner of Service Tax, Chennai – 2008 (12) S.T.R. 225 (Tri.Chennai), Everest Brand Solution Pvt. Ltd. vs. Commissioner of Service Tax, New Delhi – 2013 (32) S.T.R. 216 (Tri.Chennai) and Grey Worldwide (I) Pvt. Ltd. Vs. Commissioner of Service Tax, Mumbai – 2015 (37) S.T.R. 597 (Tri. Mumbai)



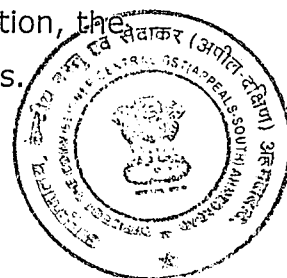


Act, 1994 which defines Advertising Agency as "any person engaged in providing any service connected with the making, preparation, **display or exhibition** of advertisement and includes an advertising consultant". (emphasis supplied). It is pertinent to note here the definition of taxable service of advertising agency as defined in clause (105)(e) of Section 65 of the Finance Act, 1994. According to the definition provided, taxable service means any service provided or to be provided by an advertising agency in relation to advertisement in any manner. By this provision, it is clear that the definition of taxable service by advertising agency is very broad and is squarely applicable in the instant case.

11. From the case records, I find that the premises of the appellants were searched as they stopped paying applicable service tax and also stopped filing statutory returns in spite of being registered with the department and fully aware of their statutory obligations. From para 3 of the show cause notice, it is evident that in spite of being summoned so many times, they never cared to reply or present their side of the story so it can be concluded that they knowing avoided discharging their statutory duties so I agree with the findings of the impugned order regarding imposition of various penalties on the ground that they suppressed the facts and did not fulfill statutory duties and accordingly I uphold the impugned order.

12. Now I consider the case laws cited by the appellants in their support. Selvel Media Services P. Ltd. Vs. Commissioner of S.T., Delhi-III, Greater Hyderabad Municipal corp. Vs. C.C.E. & C.C., Hyderabad-I, Euro RSCG Advertising Ltd., P.Ramesh vs. C.C.E., Madurai, Fifth Estate Communications (P) Ltd. Vs. Commissioner of S.T, Chennai, Maulis Advertising Services Pvt. Ltd. Vs. Commissioner of S.T, Chennai, Everest Brand Solution P. Ltd. Vs. Commissioner of S.T., New Delhi are all stay order so the findings of those cases are not of any help. In the case of Needwise Advertising Pvt. Ltd. Vs. Commissioner of S.T., Ahmedabad, an appeal to high court has been filed against it so the ratio laid down in this case is not acceptable as of now. The case of Prithvi Associates vs. C.C.E.-Mumbai is related to hiring of space i.e. sale of space and time whereas this issue has been found to be pertaining to Business auxiliary services. In the case of Grey Worldwide (I) Pvt. Ltd. vs. Commissioner of S.T.-Mumbai, the issue under consideration was incentives and contractual agreement whereas in this issue, it has already been made clear that the incentives have not been considered while raising demand in the notice and same held in the impugned order. In view of this position, the case laws cited by the appellants are not of any help to the appellants.





13. In view of the above findings, the appeal is allowed by way of remand with consequential relief.

14. The appeal is disposed off accordingly.

अपीलकर्ता द्वारा दर्ज की गयी अपील का निपटारा उपरोक्त तरीके से किया जाता है !

उमा शंकर
(उमा शंकर)

केंद्रीय कर आयुक्त (अपील्स)
अहमदाबाद

दिनांक: 29.12.2017

सत्यापित
धर्म उपाध्याय
(धर्म उपाध्याय)
अधीक्षक (अपील्स),
केंद्रीय कर, अहमदाबाद

By R.P.A.D.

To:

M/s ABC Air Travel/Advertising Agency,
4-Vraj complex,
Near Shyamal Row House,
Satellite,
Ahmedabad

Copy to:-

- (1) The Chief Commissioner, CGST, Ahmedabad Zone,
- (2) The Commissioner, CGST, Ahmedabad (South),
- (3) The Dy./Asth. Commissioner, CGST, Div.-II, Ahmedabad (South),
- (4) The Dy./Asth. Commissioner (Systems), CG ST, Ahmedabad (South),
- ✓ (5) Guard File,
- (6) P.A. File.

