



सत्यमेव जयते

केंद्रीय कर आयुक्त (अपील)

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

केंद्रीय कर भवन,

7th Floor, GST Building,

Near Polytechnic,

सातवीं मंजिल, पोलिटेकनिक के पास,

Ambavadi, Ahmedabad-380015

आम्बावाडी, अहमदाबाद-380015

☎ : 079-26305065

टेलिफैक्स : 079 - 26305136



रजिस्टर्ड डाक ए.डी. द्वारा

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फाइल संख्या : File No : V2(ST)187/Ahd-South/2018-19

10288 to 10292

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अपील आदेश संख्या Order-In-Appeal Nos. AHM-EXCUS-001-APP-0176-2018-19

दिनांक Date : 29-03-2019 जारी करने की तारीख Date of Issue 01-05-2019

श्री उमा शंकर आयुक्त (अपील) द्वारा पारित

Passed by Shri. Uma Shanker, Pr. Commissioner (Appeals)

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Arising out of Order-in-Original No. CGST/WS07/O & A-01/MK/AC/2018-19 दिनांक: 31.12.2018 issued by Assistant Commissioner, Div-VII, Central Tax, Ahmedabad-South

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अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent

**Purnima Advertising Agency Pvt.Ltd
Ahmedabad**

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 हानि कारखाने 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 प्रक्रिया 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.

(b) 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.

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



2 ...

(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 मामलों में जो भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित है।

(b) 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.

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

(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 रूपये या उससे कम हो तो रूपये 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) 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 ओ-20, न्यू मेटल हॉस्पिटल कम्पाउण्ड, मेघानी नगर, अहमदाबाद-380016

(a) 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.



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 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 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.

- (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।

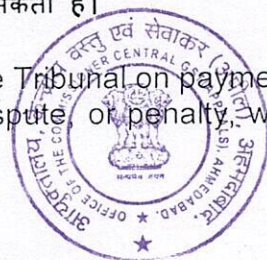
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (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:

- (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 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

M/s. Purnima Advertising Agency Pvt. Ltd., 5- Sweta Park Society, Opp. Manekbaug, Ambavadi, Ahmedabad-380015 (*hereinafter referred to as 'appellant'*) have filed the present appeal against the Order-in-Original number CGST/WS07/O&A-01/MK/AC/2018-19 dated 31.12.2018 (*hereinafter referred to as 'impugned order'*) passed by the Assistant Commissioner, CGST, Div-VII, Ahmedabad-South (*hereinafter referred to as 'adjudicating authority'*). Appellant are engaged in providing taxable service under category of Advertising Agency Service and business Auxiliary Service and hold ST registration with Service Tax.

2. The facts of the case, in brief, are that during the audit of the appellant conducted by the CERA, it was noticed that the appellant were also procuring goods such as vinyl stickers for the purpose of making and preparing advertisement hoardings. It was also noticed that they were including income towards 'trading of goods' in their operational income. They were paying applicable sales tax on trading of such goods. It was noticed that there was no transfer of property/goods, transfer of rights of goods and thus these transactions could not be covered as 'sale of goods' as defined in clause (29A) of Article 366 of the Constitution of India and any expenses incurred towards making, preparing, display or exhibition of advertisement appeared to be includible in gross value of services for the purpose of service tax payment. Accordingly it was noticed that service tax amounting to Rs. 36,83,667/- had not been paid. Accordingly, a show cause notice dtd. 09.11.2017 was issued proposing demand of service tax not paid; proposed imposition of penalties and recovery of service tax with interest. The adjudicating authority, vide the impugned order, confirmed the demands of service tax of Rs. 36,83,667/- and ordered recovery thereof with interest; imposed penalty of Rs. 36,83,667/- under Section 78 of the Act.

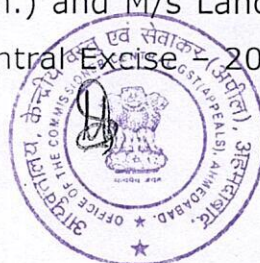
3. Being aggrieved with the impugned order, the appellant have preferred this appeal wherein it is contended that-

a) The said material is being traded by them and on which appropriate VAT/CST has been paid and since the amount collected is not for providing any service, service tax liability does not arise as held in the case of Aditya College of Competitive Exams vs. CCE - (2019) 22-STT-1 (Tri.);

b) According to Section 65B (44) of the Finance Act, 1994 (for brevity "the Act"), where a transaction is transfer of title in goods by way of sale, it is not service and further as per Section 66D (c) of the Act, trading of goods is covered in the negative list;



- c) They have also provided all the documentary proof regarding payment of VAT;
- d) as per Section 67 of the Act, the service tax shall be on gross amount charged and the Section 67 (1)(i) refers to 'such' service and not 'the service' and 'such' means having the particular quality or character specified as held in the case of M/s Plantech consultants Pvt. Ltd. vs. CCE, Pune-I - 2015 (11) TMI-1356 (Tri.Mum.), service tax is chargeable only on the gross value of taxable services which shall not include the reimbursement of various expenses. They seek reliance on the case laws of M/s Agra Steel Corporation vs. CCE - 2009 (20) STT-508 (Tri.Bang.) and M/s CKP Mandal vs. CCE - 2006 (5) STT-1 (Bom.), M/s Shiva Automobiles Pvt. Ltd. vs. CCE - 2018 (5) TMI-677 (Tri.Chen.);
- e) there is no dispute that flex printing is a "good" and not a "service" and Hon'ble Supreme Court in the case of CCE vs. Classic Strips Pvt. Ltd. - 2015 (3) TMI-590 (SC) has held that the process of flex printing amounts to manufacture;
- f) that the adjudicating authority has not appreciated the notification no. 12/2003-ST which do not tax the trading of goods as identical to the provisions of Section 66D (e) of the Act;
- g) they rely on the decision of Hon'ble Supreme Court in the case of Bharat Sanchar Nigam Ltd. vs. Union Of India -2006 (3) TMI-1 (SC) which dealt with the composite transactions which in addition to a transfer of title in goods involve an element of provision of service. They also rely on the decision of Hon'ble Supreme Court in the case of State of Karnataka vs. M/s Pro Labs & Ors- 2015 (2) TMI-388 (SC) and 2015 (321) ELT-366 (SC);
- h) The show cause notice is hit by limitation and the penalty is not liable to be imposed in view of the absence of necessary ingredients.
4. Personal hearing in both the cases was held on 02.04.2019 in which Shri Rohan Thakkar, Chartered Accountant appeared before me and reiterated the grounds of appeal. He submitted that there were separate invoices for goods and VAT is paid on the material and also submitted the works contract for fixing the flex printing. He also submitted copies of case laws of Hindustan Aeronautics Ltd. - 2009 (9) TMI-163 (Tri. Bang.), M/s ICC Reality (India) Pvt. Ltd. vs. CCE - 2013 (12) TMI-854 (Tri. Mum.) and M/s Lancor Maintenance & Services Ltd. vs. Commissioner of GST & Central Excise - 2018 (11) TMI-1091 (Tri. Chen.).



5. I have carefully gone through the facts of the case on records, grounds of appeal in the Appeal Memorandum and oral submissions made by the appellants at the time of personal hearing.

6. I find that the issue to be decided in this appeal is whether service tax has been correctly demanded and penalties imposed when the appellants did not pay service tax on the taxable service correctly by not including the value of the material in the value of the service. The appellant have contended that they had paid the VAT on the goods as it was a trading and no service tax liability arises on sale of goods.

7. I find that this is an undisputed fact as recorded in the para 19.1 of the impugned order that the appellant have shown income towards 'trading of goods' included in their operational income and paying appropriate sales tax on trading of such goods. It is further undisputed that the sales bills were scrutinized by the audit. The scrutiny has revealed that the appellant were paying service tax on mounting charges whereas they were paying VAT on printing charges/flex printing charges by considering them as sale of goods. It is also an undisputed fact that the appellant have issued separate invoices for both the categories of transactions. The appellant have produced the copies of the two invoices as evidence in support of their contention that they had sold the materials and had paid VAT on those transactions. I reproduce below the copies of the invoices. The first invoice no. INV/15-16/0713 dtd. 1.12.2015 is regarding Vinyl Avary Printing and the second invoice dtd. 29.02.2016 is for Vinyl Printing Charges on which VAT has been paid:

Page 179
VINYL | BANNER | HOARDING | GLOWSIGN

PENTAGON DIGITECH
175, Narayan Peth, N. C. Kulkar Rd., Opp. LIC Bldg, Aha Chowk, Pune - 411002
Tel.: 020-24448081 - Mob.: 9327072030 - Email: pentagondigitech@yahoo.co.in

TAX INVOICE

For PENTAGON DIGITECH

Purnima Advertising Agency Pvt Ltd 5 Sweta Park Society Near Manekbagh Hall Ahmedabad		TAX INV NO. D.CHALLAN NO PO.NO. QUOTATION NO.	INV/15-16/0713	DATE DATE DATE DATE	1-12-2015		
SNO	ITEM DESCRIPTION	WTH	HGT	QTY	Sqft	RATE	AMOUNT
1	VINYL AVARY PRINTING For Purnima Adv., Astral Bus Back Panel	7	2	20	280	11.00	3,030.00
2	VINYL AVARY PRINTING For Purnima Adv., Astral Bus Driver Side	18.50	1.75	20	648	11.00	7,128.00
3	VINYL AVARY PRINTING For Purnima Adv., Astral Bus Conductor Side	17.50	1.75	20	613	11.00	6,743.00
TOTAL AMT							16,901.00
Output Vat @ 5%						5%	817.55
Rounded							0.45
GRAND TOTAL							17,719.00

Indian Rupees Seventeen Thousand Seven Hundred Ninety Nine Only

1. Goods once sold will not be accepted back.
2. Interest at 18% will be charged on the amount remaining unpaid after due date.
3. No Claim against this invoice will be entertained unless brought to notice in writing within 48 hours.

VAT TIN 27580575917V
CST TIN 27580575917C

Declaration: I/we hereby certify that our registration Certificate under The Maharashtra Value Added Tax Act, 2002 is in force on the date on which the sale of the goods specified in this tax invoice is made by me/us and that transaction of sale covered by this tax invoice has been effected by me/us and shall be accounted for in the turnover of sale while filing of return and the due tax if any payable on sales has been paid or shall be paid.

Subject to: Jurisdiction

Receiver's Signature & Stamp

Total Signage Solution

For PENTAGON DIGITECH

Purnima Advertising Agency Pvt. Ltd.
 CIN :- U74310GJ1994PTC023380
 5, Shwetapark Society, Opp. Manekbaug Hall, Ambawadi, Ahmedabad-380015.
 Ph. : 2660 1150, Fax : 2660 1658
 Email : manan@purnimaadvt.com, hitesh@purnimaadvt.com

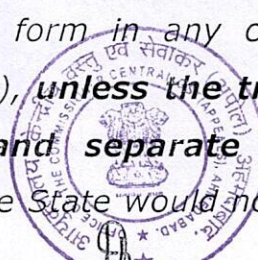


TAX INVOICE			
To, KRISH COMMUNICATION 602, Prasad Apartment, Nr. Neharunagar Circle, Ambawadi, AHMEDABAD-380015 PAN No. ATBPP 6725F		Invoice No. 0013 /15.16	Date: 29.02.2016
To, Towards Vinyl Printing Charges for your Client advt. of "Astral Pipe" for Hoardings as per the details given in the below. Product : Astral Pipe		Rate	Per
1). <u>City</u> Pune City Buses <u>Qty.</u> 20 <u>Area</u> 1541		Vinyl Printing Charges Per Sq.Ft	11.00
Add: Vat @ 5 % on Making Charges			16,951.00
VAT No. 24073405087 Dt:10.12.07 CST No. 24573405087 Dt:10.12.07			16,951.00
			847.55
			17,798.55
Rupees: Seventeen Thousand Seven Hundred Ninety Nine Only	Net Bill Amount (Rs.)	17,799.00	
Service Tax No. : AAACP 9266 G ST001	PAN: AAACP 9266 G	E.&.O.E	
This bill is due for payment on or before		For, Purnima Advertising Agency Pvt. Ltd.	
Checked By <i>[Signature]</i>	Date	<i>[Signature]</i>	
* All payment by crossed & order cheques favouring "Purnima Advertising Agency Pvt. Ltd." Payable at "Ahmedabad". * No payment is valid unless official receipt is obtained. * Interest @ 18% will be charged on bill not paid on before the above date. * Subject to Ahmedabad Jurisdiction.			



8. I find that the adjudicating authority has relied upon the case law of Bharat Sanchar Nigam Ltd. (supra) to arrive at his findings. On careful reading of the cited case law, I find that the Hon'ble Supreme Court has dealt at length with the issue of supply of goods as well as service in a composite transaction. I quote the relevant part of the order:

"43. The reason why these services do not involve a sale for the purposes of Entry 54 of List II is, as we see it, for reasons ultimately attributable to the principles enunciated in Gannon Dunkerley's case, namely, if there is an instrument of contract which may be composite in form in any case other than the exceptions in Article 366(29-A), **unless the transaction in truth represents two distinct and separate contracts and is discernible as such**, then the State would not have the power to



separate the agreement to sell from the agreement to render service, and impose tax on the sale. The test therefore for composite contracts other than those mentioned in Article 366 (29A) continues to be - did the parties have in mind or intend separate rights arising out of the sale of goods. If there was no such intention there is no sale even if the contract could be disintegrated. The test for deciding whether a contract falls into one category or the other is to as what is the substance of the contract. We will, for the want of a better phrase, call this the dominant nature test.”(emphasis supplied)

From the case law, it is very clear that when the transaction represents two clearly distinct and separate contracts, the liability of tax would arise as per nature of the separate transactions and in the instant case, it is not in dispute that the transactions have been recorded separately and distinct nature is ascertainable and accordingly, the VAT on sale of goods and service tax on service portion have been paid.

I further find that the case law of M/s Hindustan Aeronautics Ltd. (supra) cited by the appellant in their support is also very helpful to the present case. I quote the relevant portion of the order:

"6. We have considered the submissions made at length by both the sides and perused the records. First and the foremost issue to be decided in this case is whether the value of the parts/materials consumed by the appellant needs to be included for arriving at the Service Tax liability of the appellant. On the factual matrix, we find that the invoices which were produced before us clearly indicate materials charges and labour charges differently and we also find that in the very same invoices clearly indicate the discharge of Central Sales Tax as the amount of material cost. The invoices produced before us are not disputed by the Revenue. On perusal of the invoices, we find that the contention of the Id. Counsel for the appellant that they are charging for parts/materials separately and paying sales tax is correct. If that be so, we find that the decision of the Hon'ble Supreme Court in the case of M/s. BSNL (supra) will directly cover the issue in favour of the appellant as regard the non-includability of the value of the parts/materials for arriving at the correct Service Tax liability. We also find that the Principal Bench of the tribunal in the case of M/s. Delux Colour Lab Pvt. Ltd. and ors. (supra) were dealing with similar issue, wherein it was held that sale cannot be treated as service and vice versa."



In the above decision, the Tribunal has noted that *on the factual matrix, they find that the invoices which were produced before them clearly indicate materials charges and labour charges differently and they also find that in the very same invoices clearly indicate the discharge of Central Sales Tax as the amount of material cost. The invoices produced before them were not disputed by the Revenue. On perusal of the invoices, they found that the contention of the Id. Counsel for the appellant that they are charging for parts/materials separately and paying sales tax is correct.* I find that the instant issue is also having the similar situation and the facts are undisputed. I therefore find that the impugned order cannot be upheld in view of the above findings and is therefore set aside. The appeal filed by the appellant is allowed.

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

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

3/11/2018

(उमा शंकर)

प्रधान आयुक्त

केंद्रीय कर (अपील्स)

अहमदाबाद

दिनांक:

सत्यापित



(धर्मेंद्र उपाध्याय)

अधीक्षक (अपील्स),

केंद्रीय कर, अहमदाबाद

By R.P.A.D.

To,

M/s. Purnima Advertising Agency Pvt. Ltd.,

5- Sweta Park Society,

Opp. Manekbaug,

Ambavadi,

Ahmedabad-380015

Copy to:

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



