

Bhavya Enterprises Vs. Cce

Bhavya Enterprises Vs. Cce

SooperKanoon Citation : sooperkanoon.com/38995

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : May-09-2005

Judge : V Agrawal

Appellant : Bhavya Enterprises

Respondent : Cce

Judgement :

1. The issue involved in this appeal, filed by M/s. Bhavya Enterprises, is whether they are providing services of advertisement which are chargeable to Service Tax.

2. Shri S K Pahwa, learned Consultant, submitted that the appellants are working as the Booking Agent for M/s. Bennet Coleman & Co. Ltd., that they receive advertisements for Times of India newspaper which are in fully prepared classified/displayed advertising from the advertisers and forwarded the same to the newspaper for being published; that they charged from the advertisers as per the rates prescribed by Times of India; that they receive commission on these advertisements; that, initially, they took the registration under Service Tax Rules and paid Service Tax for rendering the services of advertising agency; that, subsequently, they realised that the service provided by them was not in the ambit of taxable service provided by an advertising agency; that they applied for the refund of Service Tax paid by them which has been rejected by the Department holding that the activity undertaken by them attracted the levy of Service Tax under the category of Advertising Agency Services in terms of clarification issued by the Board under Circular No. 64/13/200-ST dated 28.10.2003 dated

28.10.2003. The learned Consultant, further, submitted that the appellants are not providing any service to the advertisers as they are Booking Agents for Times of India; that, in fact, they are providing service to Times of India and get commission from them; that at the most it can be said that they are selling the printed space on behalf of Time of India. He has also, finally, mentioned that they are not preparing the advertising material at all and, therefore, no Service Tax is leviable on them. On the other hand, Sh. P.M. Rao, learned D.R., reiterated the findings as contained in the impugned Order and emphasised the fact that advertising agency means any commercial concern engaged in providing any service connected with the making, preparation, display or exhibition of advertisement and includes an advertising consultant; that as the appellants are engaged in canvassing for advertisements, receive the text of advertisement, estimates the space which it would occupy in print media, etc. their activity is covered by the definition of advertising agency under the Finance Act, 1994.

3. I have considered the submissions of both the sides. There is force in the submissions of the learned Consultant that the appellants are only acting on behalf of Times of India for selling the printed space.

It is not the case of the Department that the appellants are making or preparing advertisement, they are only engaged in the service which is know as space selling. The Board, vide Circular No. 64/13/2003-ST dated 28.10.2003 clarified that an agency undertakes merely job of bringing the order for an advertisement and does not undertake any further activity, it would not fall within the definition of advertising agency and will not be subjected to service tax. In view of this Circular, the service rendered by the appellants cannot be regarded as service of advertising agency and no Service Tax is leviable on them. The appeal is, therefore, allowed.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com