

Prithvi Associates Vs. Cce

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Jul-12-2005

Reported in : (2005)(102)ECC531

Judge : A Wadhwa, S T C.

Appellant : Prithvi Associates

Respondent : Cce

Judgement :

1. The appellant is registered with the department as advertising agent and comes under the category of "Advertising Services" and is liable to pay service tax on the services provided by them. The dispute in the present case relates to the service provided by the appellant to State/Central Government department for advertising various general awareness programmes issued by the Directorate of Information and Broadcasting, Government of Gujarat. For the said purposes, the appellant was hiring the space available in Government buses, etc., and readymade advertisements were being received by them from Government departments, which were displayed on specified buses. The said work of Government departments of displaying various advertisements were being undertaken by the appellants through a DAVP. During the period 1997-98 to 2001-02, the appellants provided such advertising services to the tune of Rs. 9,87,39,667/- but did not discharge service tax of Rs. 49,36,984/- @ 5%. It may be mentioned here that the appellant was also undertaking independent advertising services and was paying duty on the same and quarterly returns ST-3 was also

being filed by them. However, the advertising service provided to the State/Central Government departments were not being reflected by the appellants in their ST-3 returns.

2. The appellant was issued a show cause notice dated 11.04.2003 raising demand of service tax against the appellant in terms of the provisions of section 73 (a) of the Finance Act, 1994 by invoking the longer period of limitation of five years. Notice also proposed confirmation of interest in terms of the provisions of Section 75 of the said Act, and imposition of penalty under Section 76 of the Finance Act, 1994 for not paying the service tax as also imposition of penalty under section 77 of the Finance Act, 1994 for failure to file the correct ST returns. Penalty was also proposed under the provisions of Section 78 of the finance Act, 1994 for suppressing the value of taxable services.

3. After due adjudication process, the Assistant Commissioner of Central Excise, Ahmedabad, vide his impugned order rejected the appellant's contention that providing of advertising services to Government departments did not attract any service tax and confirmed demand of duty as proposed in the notice. Penalty of identical amount was also imposed under Section 76 and penalty of Rs. 13,000/- imposed under Section 77 of the Finance Act. In addition, personal penalty of identical amount was imposed under the provisions of Section 78 of the Finance Act, 1994 for suppressing or concealing the value of the taxable services. Appeal against the above order did not succeed before the Commissioner (Appeals). Hence the present appeal.

4. We have heard Shri M.H. Patil, Ld Advocate and Shri A. K. Kaushal, Ld. SDR appearing for the revenue.

5. The appellant's main contention is that the activity of hiring bus space and then displaying the advertising material received from the Government department does not come within the purview of term 'advertisement' and such display is not covered under the definition of term 'taxable services'. It is admitted that the appellants were first booking space in Government buses and then were contacting the Government department for placing advertisements. Some times ready-made advertising material was received by them for such display and in

some of the cases, the same was prepared by the appellants. Such display was mainly in the nature of general awareness programmes. Prior to the period in question they stopped paying service tax on their own without any intimation to the department.

6. Definition of "advertisement" and advertising agency as appearing in Section 65 (2) and 65 (3) of the Finance Act, 1994 is to the following effect: - "Advertisement" includes any notice, circular, label, wrapper, document, hoarding or any other audio or visual representation made by means of light, sound, smoke or gas; Advertising agency" means any concern engaged in providing any service connected with the making, preparation, display or exhibition of advertisement and includes an advertising consultant; As is clear from the above, advertisement includes any hoarding and advertising agency means any commercial concern engaged in providing any service connected with the display of advertisement. Admittedly, the appellant is an advertising agency engaged in advertisement of various products for which purposes they are listed with the Central Excise department and were paying the service tax. No distinction has been made in respect of the service provided to a private person or to State/Central Government agencies. In fact service tax Circular F. No.341/43/96-TRU dated 31.10.96 has clarified the scope of the service tax on the said services. It has been clarified 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. It is thus, noticed that the scope of the service which is included in the tax net extends not only to any service connected with making, preparation of advertisement but also includes any service connected with the display or exhibition of advertisements. Inasmuch as; admittedly the appellants are a commercial agency making profit out of the activity of display of advertisements on behalf of the Government, the same would be covered by the definition of the advertising agency. The fact that such advertisements were public interest advertisements and were meant for creating general awareness in the public does not make any difference. Advertisement is a public announcement, which can be made by way of display of any hoardings or otherwise. Advertisement is used to awaken, enlighten and activate the public at large concerning matter that effect the society generally. As such, the fact that

these Government departments were releasing advertisements so as to create public awareness will not take away the status of the activity as advertisements and the appellants as advertising agency.

7. The appellant has referred to the Tribunal's decision in the case of Commissioner of Central Excise, Ludhiana v. Azad Publications, wherein permitting display of advertisement on its site and raising bills for realizing rental charges was held public activity of advertisements. The ratio of the said decision is not applicable to the present case, inasmuch as the appellants are not renting any space belonging to them to a third person for display of any advertising material. In fact, in terms of the above decision, the tubes which provide the spaces at the back of the vehicle or on the side for display of advertisement cannot be held to be an advertising agency. Similarly, we find that the appellant's reliance on the Tribunal's decision in the case of Star Neon Singh v. Commissioner of Central Excise, Chandigarh reported in 2002 (49) RLT 541 (T) is not appropriate inasmuch as in the case admittedly the appellant was only preparing sign boards the behest of the customers. Such service was held as no advertising service. On the other hand, reliance by the Ld.

DR on the Tribunal's decision in the case of Commissioner of Central Excise, Ludhiana-III v. Gypsy Advertising Co., fully applies to the fact of the instant case.

8. In view of the foregoing, we are of the view that the services rendered by the appellants to various State/Central Government departments amount to advertisements and the appellants are required to pay service tax on the same.

9. It has also been contended before us that the demand of duty is barred by limitation inasmuch as the show cause notice for the period 1997-98 to 2001-2001 was raised on 11.04.2003.

10. However, we find that during the period in question, the appellants admittedly did not disclose the fact of providing services to the State/Central Government departments by undertaking the job of displaying the hoardings on the space hired by them on the buses and did not disclose the value of the such service provided by them and did not file any ST-3 returns. It is also noted that prior to period in

question, the appellants was paying tax on the service so provided by them but stopped paying the same thereafter without approaching the department and without seeking any clarification from them. In these circumstances, we are of the view that it has been rightly held by the authorities below that the appellant was guilty of omission or failure on their part with an intention to evade payment of duty and have justifiably invoked the longer period of limitation. The appellants have also drawn out attention to a letter-dated 11.11.2004 written by Directorate of Information and Broadcasting, Government of Gujarat, addressed to the appellants. In the said letter an opinion has been expressed that service tax is not applicable to the activity of public awareness advertisement. However, the said letter is of November 2004, and has been issued after the show cause notice was raised against to the appellants. As such, the same cannot be made the basis for the appellant to entertain bonafide reasonable belief that the service being provided by them did not attract any service tax. In view of the foregoing, we do not find any infirmity in the revenue's action of invoking longer period of limitation.

11. The appellants have also contended that it is the entire gross amount charged by them from their client, which has been taken into consideration for calculating the amount of service tax. Attention has been drawn to Para 4 of the clarification issued by the Ministry vide its Circular referred above. For better appreciation, we reproduce the para 4 of the said Circular: "It is further to be clarified that in relation to advertising agency, the service tax is to be computed on the gross amount charged by the advertising agency from the client for services in relation to advertisements. This would, no doubt, include the gross amount charged by the agency from the client for making or preparing the advertisement material, irrespective of the fact that the advertising agency directly undertakes the making or preparation of advertisement or gets it done through another person. However, the amount paid, excluding their own commission, by the advertising agency for space and time in getting advertisement published in the print media (i.e. newspaper, periodicals, etc.) or the electronic media (Doordarshan, Private TV channels, AIR, etc.) will not be includible in the value of taxable service for the purpose of levy of service tax. The commission received by the advertising agency would, however, be includible in the value of taxable service." 12. In terms of the above clarification, the expenses incurred for making the space available or rental

charges paid for getting such space for advertisements are not includable in the value of taxable service. As such, the quantum of tax is required to be re-quantified in terms of the above clarifications. The appellants have also contended that in some of the cases, they were only hiring the space and providing the same to the Government agencies, who were themselves displaying the board, etc. on such space. We agree with the Ld.

Advocate that in such a case, the activity of hiring the space and providing the same to a person, who uses it for advertisements will not meet the definition of advertisement, thus attracting no tax on the same.

13. In view of our above observation, the amount of service tax is required to be re-calculated after arriving at the correct value of the taxable service provided by the appellants, for which purpose we remand the matter to the original adjudicating authority. Inasmuch as the quantum of tax, on re-quantification is not available, we leave the matter of imposition of personal penalty upon the appellant open and to be decided by the original adjudicating authority in denovo proceedings. Appellants are at liberty to raise the legal grounds in their defence for imposition of penalty upon them. The appeal is thus disposed of in above terms.

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