

Dhanshree Publicity Vs. Cce

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Nov-22-2007

Reported in : (2008)(12)SLJ72

Judge : R Abichandani

Appellant : Dhanshree Publicity

Respondent : Cce

Judgement :

1. The appellant, a sole proprietary concern, has challenged the order of the Commissioner (Appeals) made on 31.10.2006 upholding the order-in-original, whereby demand of Service Tax of Rs. 1,23,821/- was confirmed with penalty of the like amount under Section 76 of the Act and again a penalty of the like amount under Section 78 of the Act.

2. According to the Revenue, the appellant was a commercial concern engaged in providing services connected with making preparation, display and exhibition of advertisements and also providing consultancy in advertisements. During the scrutiny of the records of M/s Mangalam Cement Ltd., it was noticed that, from 01.01.2001 to 30.09.2003 the present appellant had received an amount of Rs. 24,76,417/- on account of advertisement. The amount was paid for rendering services of advertising the products of the said company. The appellant had not obtained registration in respect of the said taxable service, 'Advertising Agency'. In response to the demand, the appellant did not file any reply and the adjudicating

authority came to a finding that the appellant had rendered service of advertising to M/s Mangalam Cement Ltd., and from the records, tax liability of Rs. 1,23,821/- was confirmed with penalties under Section 76 and 77 of the Act and also under the other provisions, besides ordering interest to be paid.

3. The adjudicating order was challenged on the ground that, the appellant was only a painter and was painting the material given to him on the walls at the sites provided to him, and he was in no way undertaking the activity relating to making or preparation of an advertisement, such as, designing, visualizing, conceptualizing etc. It was contended that, only painting work done, as per the directions of the customer, cannot be said to be an advertising agency's work.

Reliance was placed on the decision of the Tribunal in the case of *Star Neon Sign v. CCE Chandigarh* 4. The Appellate Commissioner considering the definition of the term 'advertising' under Section 62(2) and the dictionary meaning of 'display', found that, the appellant had rendered services of advertisement to M/s Mangalam Cement Ltd. and that there was no infirmity in the order of the adjudicating authority.

5. The learned Counsel appearing for the appellant contended that, the appellant was only a painter and painting the advertisement material on the roadside walls, shutters etc. and that such material was provided by the advertiser. The appellant was only deputed for wall painting by Mangalam Cement Ltd. and was paid on sq. ft. basis for the labour work done by him. It was submitted that, the words 'Dhanshree Publicity' were not conclusive for holding that the appellant was providing services of 'advertising agency', because, in reality, he was only painting the walls at the behest of the said company with the designs and material provided by it for the site of its dealers and stockist.

It was submitted that, the Appellate Commissioner did not consider the relevant records showing that the appellant was only a painter. He submitted that even if the matter painted on the wall by the appellant amounted to an advertisement, the appellant did not become an 'advertising agency'. He relied upon the Circular of the Board 'Annexure-I' to the Memo of Appeal, which clarified that the activity of painting the readymade advertisement from the advertisers would not attract

service tax. It is only when such persons undertake any activity relating to making or preparation of an advertisement, such as, designing, visualizing, conceptualizing etc. that they would become liable to pay service tax.

6. From the material on record, he pointed out that, the appellant was only a painter, who was painting walls on the dealers' premises at the instance of Mangalam Cement Ltd. and was paid for such painting work.

He reiterated the written submissions, which were placed on record in the stay application of this appeal. He relied upon the decision in the case of *Zodiac Advertisers v. Commissioner of Central Excise, Cochin* reported in 2006 (3) STR 538, for pointing out that, mere undertaking of screen printing of advertisement hoardings was held not to be falling under the category of 'advertising agents'. He also relied upon the decision in the case of *Ajanta Fabrication v. Commissioner of Central Excise, Meerut* reported in 2006 (4) STR 605, in which it was held that, alien and unconnected services for manufacturing activity cannot be brought within the scheme of levy of service tax on advertising services. In that case, hoardings and sign boards were made, but the design, colour, scheme etc. were provided by the State Tourism authority.

7. The learned authorised representative for the Department, on the other hand, argued that, the name of the appellant 'Dhanshree Publicity' was suggestive of the work done by it. He submitted that business name 'Dhanshree Publicity', adopted by the appellant, which was also written on the bills issued by the appellant for the work done indicated the nature of services provided by the appellant, which fell under the category of 'advertising agency'. He submitted that the appellant did not cooperate before the adjudicating authority and he cannot get a premium for his silence and non-cooperation. He submitted that, keeping in view the ingredients of the taxable service of 'advertising agency', as defined, and also the meaning of the word 'advertisement' as occurring in Black's Law Dictionary and other dictionaries, it was evident that the appellant was connected with making preparation, display and display of advertisement by painting the advertisement as per the photographs of advertisement given to him on the walls. The appellant was displaying the advertisement by the process of painting making.

8. The learned authorised representative heavily relied upon on paragraph 11 of the decision of the Division Bench of the Hon'ble High Court of Gujarat in the case of Addition Advertising v. Union of India , in which, while rejecting the contention that entry 55 in the State List to the Seventh Schedule to the Constitution, namely, 'tax on advertisement', would exclude the competence of the Parliament to make law on that subject under the State or Concurrent List, it was held that, the tax imposed was not on the advertising, but it was on the services rendered with reference to the advertisement. It was submitted that, even in the present case, the services rendered by the appellant were with reference to the advertisement and it was immaterial as to who supplied the matter, design etc., which was required to be advertised. He submitted that, even if the site was provided by Mangalam Cement Ltd. by directing the appellant to go to the dealers'/stockists' premises, the appellant was required to visualize as to the manner in which he should prepare the painting of the advertisement which was to be displayed. He submitted that, any different view would result in redundancy of the provisions.

9. The facts are in a narrow compass. The material on record establishes that the appellant was the sole proprietor of Dhanshree Publicity. If one is to go by mere business name, then there would hardly be anything for the appellant to argue, because, the word 'Publicity' imperiously adopted by the appellant would suggest the activities which have direct relations to advertising. However, in the facts of this case, it appears that the pompous business name adopted by the appellant did not indicate the reality of the business that the appellant was only a sole-proprietor, who was entrusted the work of painting on the walls of the dealers'/stockists' premises by Mangalam Cement Ltd. The advertisement, which was to be painted on the walls, was, admittedly, provided by Mangalam Cement Ltd. Even the colour legend was indicated on the photograph of the advertisement. There can be no dispute over the fact that the writing, design etc., which were provided to the appellant by Mangalam Cement Ltd., who appears to be the main dealer of Birla Uttam Cement, when displayed, would amount to advertisement of its cement. The name of B.K. Birla Group of Companies is also shown in the said design provided for painting on the walls.

Some photographs of the buildings also show that this advertisement was painted on various buildings. However, the mere fact that the literature provided, when displayed, would amount to an advertisement of the product named therein would not be conclusive for holding that the activity of painting undertaken by the appellant was a service falling in the category of 'advertising agency'. A mere painter would not be concerned with the purpose for which the painting is done. His job, in a case like this, would be only to use his personal skill by painting whatever material is given to him at the site, which is also provided to him. There are even way side painters who would, for an amount, quickly paint out advertisements for anyone who engages them.

They would surely not become an 'advertising agency'. Mere menial expertise of painting will not drag the artist into the net of taxable service of 'advertising agent'. Therefore, something more is required than mere earning of livelihood by use of the artistic talent of painting by the person who is engaged as the painter. The Revenue appears to have been well aware of this aspect way back in the year 1999 when Trade Notice dated 16.09.1999 was issued by the Calcutta Commissionerate, in which it was clarified in paragraph 2 as under: The matter has been examined by the Ministry of Finance, Department of Revenue (Tax Research Unit). It has been decided that in the case of persons, who are printing and publishing telephone directories, Yellow pages or business directories, their activity is essentially of printing a readymade advertisements from the advertisers and publishing the same in the directory. Their activities are similar to those carried out by newspapers or periodicals. As such, this activity shall not attract service tax. However, if these persons also undertake any activity relating to making or preparation of an advertisement, such as designing, visualizing, conceptualizing etc., then they will be liable to pay service tax on the charges made thereon.

10. In the present case, the matter which was to be advertised was already in the photographs supplied to the painter who merely painted the same matter on the walls. Similar contention that the activity of mere painting did not fall in the category of 'advertising agency' found favour with the Tribunal in the case of *Ajanta Fabrication v. Commissioner of Central Excise, Meerut* (supra), in which, in

the context of the activity of making hoardings, sign boards and signages, it was held that such services did not partake or include the services (designing, conceptualizing, visualizing) normally rendered by advertising agencies. Even in *Zodiac Advertisers v. Commissioner of Central Excise, Cochin* (supra), it was held that, making and preparation of the advertisement was the most important and difficult part as it involved conceptualization, visualization and designing. The printed material was only a product. Therefore, where mere screen printing was undertaken, it was held that, there was no creative activity. Mere manufacturing the product as per the instructions and specifications of the job work would not amount to rendering the service which can fall in the category of 'advertising agency'.

11. In the present case, all the activities mentioned in the definition of 'advertising agency' were not carried out by the appellant, and the ratio of the decision in the case of *Zodiac Advertisers v. Commissioner of Central Excise, Cochin* (supra), as reflected in para 6 of the judgment would apply in the present case.

13. For the foregoing reasons, the view taken by the authorities below cannot be sustained and the impugned order is, therefore, set-aside and the demand is dropped. The appeal is accordingly allowed.

(Dictated and pronounced in the open Court on the 23rd day of November, 2007)

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