

2023 (1) TMI 297 - CESTAT AHMEDABAD

DRISHTY COMMUNICATION PRIVATE LIMITED VERSUS C.C.E. & S.T. -RAJKOT

SERVICE TAX Appeal No. 135 of 2012

Order No. - A/10016/2023

Dated: - 5-1-2023

Levy of Service Tax - Advertising Agency Service or not - remitting 85% of the total amount received from their customers on getting space/time from media agencies or news papers or various publications - It has been argued that it is only the sub agent M/s. Surya Publicity which provided the services to their client and since appellant has not provided service, there is no question on payment of any Service Tax - exemption under Notification No. 06/2005-ST dated 01.03.2005 with effect from 01.04.2005 - HELD THAT:- In the instant case M/s. Surya Publicity was providing Advertising Services to its client. M/s. Surya Publicity was not discharged any service tax liability as the same was liable for the levy of Service Tax. M/s. Surya Publicity was purchasing time and space in the newspaper / media companies through the appellant. The amount paid by M/s. Surya Publicity to the appellant for purchase of time M/s. Surya Publicity to the appellant for purchase of time and space was sought to be tax by revenue under the category of Advertising Service. It is seen that no evidence has been placed from record to establish that the appellant were providing "Advertising Agency Services." The role of appellant was limited to being an intermediary in the sale of space/ time for media agency on commission basis.

In this regard the decision of Tribunal in case of CCE, CHANDIGARH VERSUS M/S. HK. ASSOCIATES AND OTHERS, H. KASS.. VERSUS CCE [[2008 \(12\) TMI 65 - CESTAT, NEW DELHI](#)] is relevant - It was held in the case that *amounts paid to M/s. H.K. Associates by KBPL have been accounted as advertisement and sales promotion expenses. A portion of the sum so received was spent on advertisement by H.K. Associates. These facts alone can not lead to an inference that M/s. H.K. Associates have rendered the services as advertising agency.*

The appeal is allowed.

Judgment / Order

MR. RAMESH NAIR , MEMBER (JUDICIAL) AND MR. RAJU, MEMBER (TECHNICAL)

Shri Paresh Sheth, Advocate for the Appellant

Shri. Tara Prakash, Assistant Commissioner (Authorized Representative) for the Respondent

ORDER

This appeal has been filed by M/s. Drishty Communication private Ltd. Against demand of Service Tax.

2. The appellants were engaged in providing services as advertising service to get customize and were registered "The Indian Newspaper Society" (INS). They were remitting 85% of the total amount received from their customers on getting space/time from media agencies or news papers or various publications. They were retaining the 15% of the remaining amount as their commission. The appellants were paying

Service Tax on the said commission amount. A Show Cause Notice were issued to the appellant seeking to classify the service provided by them under definition “Advertising Agency Service” taxable service under Section 65(105)(e) of the Finance Act 1994.

Section 65 (3) of the Finance Act, 1994 which was inserted by the Finance Act, 1996 w.e.f. 01.11.1996 reads as under:

“advertising agency” means any person engaged in providing any service connected with he making, preparation, display or exhibition of advertisement and includes an advertising consultant;

w.e.f 01.05.2006, the term ‘person’ was substituted for the term ‘commercial concern’. The consequences of this changes are as follows:

- *“For the period prior to 01.05.2006, only services provided or to be provided by a commercial concern (and not by any other person) were liable to tax.*
- *Services provided or to be provided by any person (including a commercial concern) on or after 01.05.2006 shall be liable to tax.”*

2.1 The notice alleged that one M/s. Surya Publicity was one of their subagent who had not obtained Service Tax registration and was not paying Service Tax, as they were claiming benefit of the threshold exemption under Notification No. 06/2005-ST dated 01.03.2005 with effect from 01.04.2005. The appellant had consequently not charged and paid any Service Tax for the services rendered to their sub agent M/s. Surya Publicity. The notice alleged that although the services provided by the sub agent M/s. Surya Publicity to their client/customers were exempted by way of said Notification, the services provided by the appellant to M/s. Surya Publicity were not exempted as the appellant were not exempted under said notification. Learned Counsel have argued that the appellant has not provided any services to their client. It has been argued that it is only the sub agent M/s. Surya Publicity which provided the services to their client and since appellant has not provided service, there is no question on payment of any Service Tax.

2.2 Learned Counsel also relied on the clarification issued by CBE C vide Circular No. 96/7/2007- ST dated 23.08.2007, wherein following table has been classified:

Reference Code	Issue	Clarification
004.01/ 23.08.07	Persons/agencies canvass advertisements for publishing, on commission basis. Such persons/agencies do not provide any other services like making preparation, display or exhibition of advertisement. Whether merely canvassing advertisement for publishing on a commission basis by persons/agencies is classifiable as Advertising Agency Service [section 65 (105)(e)] or not?	Merely canvassing advertisements for publishing, on commission basis, is not classifiable under the taxable service falling under section 65(105) (e) such services are liable to service tax under business auxiliary service [section 65(105) (zzb)].

2.3 He also relied on the decision of Tribunal in case of Adbur Pvt. Ltd.- 2017 (5) GSTL 334 (Tri. – Del.)

- H. K. Associates – 2009 (14) STR 543 (Tri.-Del.)

2.4 He argued that the demand raised under the head of “Advertising Agency Services” cannot be sustained. In view of the aforesaid circular and the case laws cited above.

3. Learned AR relied on the impugned order.

4. We have considered rival submissions. We find that in the instant case M/s. Surya Publicity was providing Advertising Services to its client. M/s. Surya Publicity was not discharged any service tax liability as the same was liable for the levy of Service Tax. M/s. Surya Publicity was purchasing time and space in the newspaper / media companies through the appellant. The amount paid by M/s. Surya Publicity to the appellant for purchase of time M/s. Surya Publicity to the appellant for purchase of time and space was sought to be tax by revenue under the category of Advertising Service. It is seen that no evidence has been placed from record to establish that the appellant were providing "Advertising Agency Services." The role of appellant was limited to being an intermediary in the sale of space/ time for media agency on commission basis. In this regard the decision of Tribunal in case of H.K Associates is relevant. In the said decision following has been held.

"7.1 The issue to be decided is whether M/s. H.K. Associates have rendered the services of advertising agency to KBPL. It is not disputed that actual work of painting on the walls/advertisements were undertaken by various parties to whom M/s. H.K. Associates have paid the amount as mentioned earlier. No evidence have been relied upon to hold that M/s. H.K. Associates have conceived, designed, prepared the advertisements in question.

7.2 The amounts paid to M/s. H.K. Associates have been accounted under the category of advertisement and sales promotion expenses by KBPL. A portion of the sum so received was spent on advertisement by H.K. Associates. These facts alone cannot lead to an inference that M/s. H.K. Associates have rendered the services as advertising agency and the entire amount of about Rs. 9 crores received from KBPL has to be treated as representing payment for rendering advertising services.

7.3 We have also perused the notes given in the balance sheets of KBPL. For example, in the balance sheet for the year 1999- 2000, a sum of Rs. 4,88,23,638/- is accounted as advertisement and sales promotion expenses. In the schedule Q to the balance sheet relating to the head "other expenses", there is a 'note' which clarifies as under :-

"Commission on sales amounting to Rs. 1,19,77,790.27 paid to M/s. Harmeet Kandhari & Associates, belonging to a relative of the directors of the company, has been clubbed with the Advertisement & Sales Promotion expenses."

Similar clarifications appear in the balance sheets for the other years as well. Whether commission of sales could be treated as advertisement and sales promotion expenses is a debatable point. However, this is not an issue to be decided by us. It suffices to say that the terms of the agreement produced and the entries in the balance sheets of manufacturing company and those of M/s. H.K. Associates support the claim by the learned advocate for the parties. The balance sheet of M/s. H.K. Associates also mentions these amounts only as commission on sales.

8. In view of the above, we find merit in the appeal of M/s. H.K. Associates and accordingly, allow the same. Inasmuch as the appeal of main party M/s. H.K. Associates is allowed on merit, the question of enhancement of penalty on M/s. H.K. Associates and imposition of penalties on other three parties as prayed for in the other appeals by the department does not arise."

The aforesaid decision of Tribunal has been upheld by Hon'ble Apex Court as reported in 2010 (19) STR J111 (S.C).

In view of aforementioned CBEC clarification and the decision of tribunal in similar circumstances the demand cannot be upheld, and is therefore set aside. The appeal is consequently allowed.

(Pronounced in the open Court on 05.01.2023)

Citations: in 2023 (1) TMI 297 - CESTAT AHMEDABAD

1. [2009 \(7\) TMI 1380 - SC Order](#)
2. [2017 \(5\) TMI 101 - CESTAT NEW DELHI](#)
3. [2008 \(12\) TMI 65 - CESTAT, NEW DELHI](#)