CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, MUMBAI
REGIONAL BENCH
COURT No.

Service Tax Appeal No. 87732 of 2016

(Arising out of Order-in-Original No. 39/ST-V/SKD/16-17 dated 18.11.2016 passed by the Commissioner of Service Tax-V, Mumbai)

M/s. Network Advertising Pvt. Ltd. **Appellant**
Network House, G-7 MIDC,
Chakala, Andheri (E),
Mumbai 400 093.

Vs.

Commissioner of Service Tax-V, Mumbai **Respondent**
3rd Floor, Utpad Shulk Building,
Bandra-Kurla Complex, Bandra (E),
Mumbai 400 051.

WITH

Service Tax Appeal No. 86310 of 2019

(Arising out of Order-in-Original No. 14/COM/CD-ME/18-19 dated 31.01.2019 passed by the Principal Commissioner of CGST & CE, Thane Rural)

M/s. Network Advertising Pvt. Ltd. **Appellant**
Network House, G-7 MIDC,
Chakala, Andheri (E),
Mumbai 400 093.

Vs.

Commissioner of Service Tax-V, Mumbai **Respondent**
3rd Floor, Utpad Shulk Building,
Bandra-Kurla Complex, Bandra (E),
Mumbai 400 051.

Appearance:

Shri Vishal Agarwal with Shri Abhishek Deodhar, Advocates, for the Appellant
Shri Vinod Kumar, Assistant Commissioner, Authorised Representative for the Respondent

CORAM:

HON'BLE DR. SUVENDU KUMAR PATI, MEMBER (JUDICIAL)
HON'BLE MR. ANIL G. SHAKKARWAR, MEMBER (TECHNICAL)

Date of Hearing: 14.07.2023
Date of Decision: 29.08.2023

FINAL ORDER NO. 86266-86267/2023

PER: ANIL G. SHAKKARWAR

Above stated two appeals are taken together for decision since the issue involved in both of them is same and the appellant is also the same.

2. Brief facts of the case are that the appellant is registered for Service Tax and pay service tax since 1996. Appellant places advertisements for clients in various newspapers and magazines and receives the cost of such advertisements as press space bill. Appellant retains 15% of the amount charged to the ultimate customer and remaining 85% of the amount collected from ultimate customer remits to the newspapers or magazines which publish advertisements. Appellant pays service tax on 15% amount retained by it and does not pay any service tax on the balance 85% of the amount which he does not retain but collects from the ultimate customer and transfers the same to the newspapers or magazines which publishes the advertisements. It appeared to Revenue that the appellant was required to pay 6% amount on 85% amount collected from the ultimate customer and remitted to the publisher of the advertisement treating the same as exempted service by invoking the provisions of sub-rule (2) of Rule 6 of Cenvat Credit Rules, 2004. Therefore, initially a show cause notice dated 19.12.2012 was issued to the appellant covering the period from financial year 2008-09 to 2011-12 demanding 6% amount on 85% amount which did not suffer service tax at the hands of appellant and the amount demanded under said sub-rule (2) of Rule 6 was Rs.4,90,25,118/-. In addition, another issue was also dealt with in the said show cause notice, but since the appellant has not preferred any appeal in respect of the other issue, the details of the other issue are not taken into consideration. The said show cause notice dated 19.12.2012 is connected to appeal No. ST/87732/2016. The said show cause notice was contested by the appellant. Appellant submitted to the original authority that 85% of the amount is towards media cost and the same is not retained by the appellant and the appellant has paid service tax on the 15% component retained by it and, therefore, the said service cannot be considered as exempted service. Appellant has also contested the said show cause notice on time bar. In

the other appeal, show cause notice on similar lines was issued on 19.04.2017 for the period from financial year 2012-13 to 2015-16 demanding amount of around Rs.9.32 crores. The said show cause notice was also contested on similar lines. The show cause notice dated 19.12.2012 was adjudicated through order-in-original dated 18.11.2016 wherein the original authority has confirmed the demand of Rs.4,90,25,118/- and imposed equal penalty under Section 78 of Finance Act, 1994 and imposed another penalty of Rs.10,000/- under Section 77 of Finance Act, 1994. Aggrieved by the said order, appellant is before this Tribunal through appeal No. ST/87732/2016. The other show cause notice dated 19.04.2017 was adjudicated through order-in-original dated 31.01.2019. The original authority has resorted to Rule 6(3A) of Cenvat Credit Rules, 2004 and held that proportional Cenvat credit in respect of exempted part for the consideration received was Rs.6,46,873/- and confirmed the said demand and also appropriated the same against the demand. In view of the said alternative provided by Cenvat Credit Rules, he dropped the demand of amount of Rs.9,26,42,556/-. Aggrieved by the confirmation of demand of Rs.6,46,873/-, appellant is before this Tribunal through appeal No. ST/86310/2019.

3. Heard the learned counsel for the appellant. Learned counsel for the appellant has submitted that the appellant has paid entire service tax and the consideration received by it and that the 85% of the component of the amount collected from ultimate customer which was passed on to the newpaper or magazine which published the advertisement was not required to be subjected to service tax at the level of the appellant, as the said value was not to be included in the assessable value at the end of the appellant as clarified by CBEC in Circular No. 341/43/96-TRU dated 31.10.1996. In both the appeals, the said contention is applicable. He further contended that the appellant is only providing the service of arranging or facilitating placement of advertisements in print media against which appellant is retaining 15% component of the amount charged to the ultimate customer and paying service tax on the said component and the appellant is not paying service tax on that

component which they do not retain and pay to the print media who publishes the advertisement and that the said computation of the assessable value by excluding 85% of the part is in accordance with the said Circular dated 31.10.1996 and as a result, the findings of the original authority in both the impugned orders are liable to be set aside. As an alternative argument, he has submitted that the stand taken by Revenue in respect of order-in-original dated 31.01.2019 to the effect of collecting only service tax component that was consumed in the 85% of the assessable value is also applicable to order-in-original dated 18.11.2016. He has further submitted that the appellant was registered with Service Tax and was regularly subjected to audit and, therefore, the activities of the appellant were known to Revenue and, therefore, extended period of limitation was not invokable.

4. Heard the learned AR. Learned AR has submitted that the appellant is relying on Circular dated 31.10.1996 which deals with advertising agency whereas Circular No. 96/7/2007-ST issued by CBEC has clarified that where the advertisements are canvassed on commission for publishing in newspaper or magazine, then such service could be treated as business auxiliary service and, therefore, the clarification dated 31.10.1996 is not applicable in the present case.

5. We have carefully gone through the record of the case and submissions made. We understand that Revenue has invoked the provisions of sub-rule (2) of Rule 6 of Cenvat Credit Rules, 2004 for demand of amount in respect of 85% component of the consideration received by the appellant, which was subsequently paid to the news media which published the advertisements collected by the appellant. We would, therefore, like to discuss about the provisions of sub-rule (2) of Rule 6 of Cenvat Credit Rules, 2004. Sub-rule (2) of Rule 6 of Cenvat Credit Rules, 2004 is reproduced below:-

"(2) Where a manufacturer or provider of output service avails of CENVAT credit in respect of any inputs or input services, and manufactures such final products or provides such output service

which are chargeable to duty or tax as well as exempted goods or services, then, the manufacturer or provider of output service shall maintain separate accounts for receipt, consumption and inventory of input and input service meant for use in the manufacture of dutiable final products or in providing output service and the quantity of input meant for use in the manufacture of exempted goods or services and take CENVAT credit only on that quantity of input or input service which is intended for use in the manufacture of dutiable goods or in providing output service on which service tax is payable."

Simple reading of the said provisions indicates that there should be more than one service provided by a service provider for invocation of said sub-rule (2) and one of the services provided should be exempted service. This is pretty clear from the words "as well as" used in the said sub-rule (2). It further provides that Cenvat credit in respect of inputs or input services going into service on which service tax is not payable is not admissible for availment and Cenvat credit in respect of inputs and input services which are utilized for providing service on which service tax is payable are admissible for availment. This clearly indicates that the service provider should be providing more than one services and when one of the services provided is exempted, then alone the provisions of sub-rule (2) of Rule 6 of Cenvat Credit Rules, 2004 are invokable. In the present case, Revenue has failed to establish that there are more than one services provided by the appellant. Appellant is providing only one service whether it is earlier classified as advertising agency service or subsequently classified as business auxiliary service. Appellant is merely providing one service and, therefore, the provisions of sub-rule (2) of Rule 6 of Cenvat Credit Rules, 2004 are not invokable in the present case. Therefore, the demands involved in both the appeals are not sustainable. Therefore, the impugned order-in-original dated 18.11.2016 is modified to the extent that the demand confirmed to the tune of Rs.4,90,25,118/- is set aside and interest and penalty associated with that imposed on the appellant are set aside. Further, the impugned order-in-original dated 31.01.2019 is set aside.

6. In above terms, both the appeals are allowed.

(Order pronounced in the open court on 29.08.2023)

(Anil G. Shakkarwar)
Member (Technical)

(Dr. Suvendu Kumar Pati)
Member (Judicial)

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