(2024) 03 CESTAT CK 0024

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Service Tax Appeal No.40683 Of 2013

M/s. Hansa Vision Pvt. Ltd — APPELLANT

Vs

Commissioner Of GST & Central Excise — RESPONDENT

Date of Decision : 19-03-2024

Acts Referred:
Finance Act, 1994 — Section 73, 73(1), 76, 77, 78

Citation : (2024) 03 CESTAT CK 0024

Hon'ble Judges : P. Dinesha, Member (J);Ajit Kumar, Member (T)

Bench : Division Bench

Advocate : Radhika Chandrasekar, Rudra Pratap Singh

Final Decision : Disposed Of

Judgement

M. Ajit Kumar, Member (T)

1. This appeal arises out of Order in Original No. No. 1/2013 dated 17.1.2013 passed by the Commissioner of Central Excise, Chennai IV Commissionerate.

2. Brief facts of the case are that the appellant who is engaged in producing television programmes and supervision of production activities were registered with the Service Tax Department under the category of ?Advertising Service?. It appeared to Revenue that they were not paying appropriate service tax on advertising service and not were registered and paying service tax for other taxable services. Scrutiny of the balance sheet for the financial years 2005 to 2007 and other documents relating to payment of service tax by Revenue appeared to indicate that the appellant produce television serials / programmes on behalf of television channels for fixed charges for each episode. The appellant vide their letter dated 6.2.2009 admitted to the fact that the services provided by them to television channels is classifiable under ?Programme Producers? Service?. It appeared to the Department from a scrutiny of income and service tax paid by the appellant that the quantum of service tax paid by them was not commensurate with the income accounted by them in their books of accounts

viz. ?Revenue from Programme and Advertising Service?. Further, service tax was not paid on the statutory due dates and was paid once a year without any correlation with the taxable value realized. Even though the appellants claimed that they had filed returns, they later admitted that no ST-3 returns were filed by them. Hence Show Cause Notice dated 21.4.2010 was issued to the appellant demanding service tax of Rs.2,26,78,345/- under proviso to sec. 73(1) of the Finance Act, 1994 for rendering ?Programme Producers? Service and Advertising Service? during the period from October 2004 to March 2009, demanding interest under sec. 73 of the Act and proposing penalties under sections 76, 77 and 78 of the Act. In adjudication, the adjudicating authority confirmed the demand on the said services for the disputed period and imposed penalties under sec. 77 and 78 of the Finance Act, 1994. Hence the present appeal before the Tribunal.

3. We have heard learned counsel Smt. Radhika Chandrasekar for the appellant and Shri Rudra Pratap Singh, learned Additional Commissioner (AR) for the Revenue.

4. The learned counsel has submitted that the appellant is engaged in the business of Advertising and also in the business of providing TV Content (TV Programs) for TV channels. The Appellant as an advertising agency releases advertisements in print media of various clients. Both streams of collection have been accounted for under the heading ?Revenue from Programme and Advertising Service?. With respect to the television serials produced by the Appellant on behalf of the TV channels the Appellant collects the cost of production of TV programmes. The Appellant has discharged service tax for the amounts received from TV channel for TV Content Production. As regards the release of advertisements through print media the Appellant only arranges for releasing the advertisement in the print media on behalf of the clients and the cost of which along with commission is recovered by the Appellant. The Appellant did not discharge service tax with respect to the amount collected from client and paid to print media towards the cost of production recovered from the client as the same is not liable to service tax. The impugned order has held that the Appellant has short paid service tax as there is a difference between the revenue shown for service tax purposes and the revenue accounted in the Profit and Loss Account. The learned counsel contended that the department has assessed the tax liability on the basis of the gross turnover shown in the Profit & Loss account which includes the cost of print media. The cost of print media is not includable for the purposes of levy of service tax and that the Appellant has already discharged service tax with respect to the agency commission. She pleaded that the learned Original Authority has not taken into consideration the payments made by the Appellant and there is no discussion or finding in this regard. The Appellant had also submitted a reconciliation statement showing the actual gross billing for service tax purpose as under:

Year

ADVT (Advertising Service) liability as shown in the SCN

ADVT (Advertising Service) liability as per Appellant?s records

ADVT (Advertising Service) Service Tax paid

Difference payable

2004-05

2,64,111

2,64,111

2,64,111

0

2005-06

17,80,562

1,36,654

1,36,654

0

2005-06

30,69,633

3,98,755

3,93,121

5,634

2007-08

46,02,714

8,54,398

7,12,049

1,42,349

2008-09

35,51,599

3,17,655

3,17,658

-3

Tota

1,32,68,619

19,71,576

18,23,593

1,47,980

She relied on the clarification issued by the Tax Research Unit vide F. No. 332/4/2008 ? TRU dated 05.05.2008 and stated that Service Tax is not leviable on that component of sale of space in print media even if it is provided by advertising agency and commission earned by the advertising agency is only liable to Service Tax. Hence the impugned order merits to be set aside.

5. The learned Additional Commissioner (AR) on behalf of Revenue has stated that the Appellant has not produced any documentary evidence and therefore the taxable value adopted for service tax demand during the disputed period is correct and the impugned order merits to be upheld.

6. We find that the dispute arose due to the lack of submission of data in a timely manner and a proper explanation of facts in correlation with the law, by the Appellant. Now that the Appellant is ready to present the data which as per their calculation leaves a very small amount of duty to be paid, it would serve the ends of justice if the same is verified and then examined in connection with the law and Boards Circulars referred to by the Appellant. The matter hence merits to be examined afresh.

7. Having regard to the discussions above, the impugned order is set aside and we remand the matter back to the original authority for de novo adjudication. All issues are left open. The lower authority shall follow the principles of natural justice and afford a reasonable and time bound opportunity to the appellant to state their case both orally and in writing if they so wish, before issuing a speaking order in the matter. The appellant should also co-operate with the adjudicating authority in completing the process of verification expeditiously and in any case within ninety days of receipt of this order. The appeal is disposed of accordingly.