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IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, WEST ZONAL BENCH AT MUMBAI

COURT No. I

Appeal No. ST/01/2011

(Arising out of Order-in-Appeal No. AKP/275/NSK/2010 dated 30.09.2010 passed by Commissioner of Customs & Central Excise (Appeals), Nasik)

For approval and signature:

Honble Mr. M.V. Ravindran, Member (Judicial)
Honble Mr. C.J. Mathew, Member (Technical)

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1. Whether Press Reporters may be allowed to see : No
the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?

2. Whether it should be released under Rule 27 of the : No
CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?

3. Whether Their Lordships wish to see the fair copy : Seen
of the Order?

4. Whether Order is to be circulated to the Departmental : Yes
authorities?

Namrata Advertising
Appellant
Vs.

Commissioner of Central Excise
Nasik
Respondent

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Appearance:
Shri Venkatesh Iyer, Consultant
for appellant
Shri B. Kumar Iyer, Supdt. (AR)
for respondent

CORAM:
Honble Mr. M.V. Ravindran, Member (Judicial)
Honble Mr. C.J. Mathew, Member (Technical)

Date of Hearing: 18.08.2015
Date of Decision: 18.08.2015

ORDER NO

Per: M.V. Ravindran

This is an appeal against Order-in-Appeal No. AKP/275/NSK/2010 dated 30.09.2010.

2. Heard both sides and perused the records.

3. The issue involved in this case is whether the activity undertaken by the appellant is taxable under the head advertising services or otherwise.

4. Appellant herein is undertaking an advertising business as well as creating infrastructure like stand for display of advertisements at various places for the clients. It is the case of the revenue that the amounts received by appellant for this renting out of the stands amounts to advertising services. On perusal of the records, it transpires that the appellant herein is taking certain prominent places in the city on rental basis, then installing an infrastructure, including boards thereon. Appellant produced copies of agreement entered with the owners of the property taken on rent by the appellant and it is undisputed that appellant is paying rent of the space to the parties. On the infrastructure so created, appellant displays the advertisement in form of billboards and collects rent for such display. Both the lower authorities have overlooked the fact that appellant is not engaged in any services connected

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with making, preparation, display or exhibition of advertisement while renting out the infrastructure.. We find that the ratio of the judgement of this Tribunal in the case of Star India (P) Ltd 2006 TIOL 945 CESTAT MUM would help the appellant herein. We reproduce the relevant paragraph.

3.1 On considering the matter on record and the submissions, it is found:

(a) Once a phrase or expression is defined in a statute, that definition alone will entirely apply whenever that phrase or expression is employed in the body of the statute. Even the definition should be understood in the context of phrase defined. Purpose of definition is not to contradict or supplant it altogether after considering these submissions in light of the following decisions: -

(i) In Hotel And Catering Industry Training Board Vs. Automobile Proprietary Limited (1968 (3) All.E.R.399 (at page 402 (E), Lord Denning speaking for the Court of Appeal explained as under -

" It is true that "the industry" is defined ; but a definition is not to be read in isolation It must be read in the context of the phrase which is defines, realizing that the function of a definition is to give precision and certainly to a word or phrase which would otherwise be vague and uncertain --but net to contradict it or supplant it altogether".

(ii) In I.L.M. Cadija Umma and Another Vs. Don Manis Appu (A.I.R. 1939 Privy council 63 (at page 65), the principle was explained as under:-

"A phrase having been introduced and then defined, the definition prima facie must entirely determine the application of the phrase; but the definition must itself be interpreted, in case of doubt, in a sense appropriate to the phrase defined and to the general purpose of the enactment".

(iii) In Hariprasad Shivshankar Shukla Vs. A.D.Divelkar - AIR 1957 SC 121, = (2002-TIOL-447-SC-MISC) a railway company was taken over by the Govt. of India. The railway

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company served a notice on its workmen to terminate the services of all workmen. The Supreme Court held that in ordinary acceptation, retrenchment connotes that the business itself is being continued but the portion of the staff or labour is discharged as surplusage. In view of the above ordinary acception. the Supreme Court held that the termination of service of all workmen as a result of the closure of business cannot be properly described as retrenchment as defined in Section 2(00). From the above settled position for interpretation of a definition clause it is clear i.e. find what is the ordinary accepted version of the expression defined, thereafter find whether the said ordinary accepted version fits in with every requirement of definition clause. Then, the definition is not to be taken to as destroying the essential meaning of the term defined. A definition merely employing apt and readily intelligible words. Keeping this in mind, it is to be held that Ordinary accepted version of words "advertising agency" would be an Agent who acts for a producer of goods or services, planning, designing and managing producer of goods or services of advertisement i.e. an Agents office, which plans, designs and manages advertising for other companies as per Dictionary of marketing (third edition) by Bloomsbury. It has to be an organization which specializes in providing services such as media selection, creative work, production and campaign planning to clients Circular dated 16.8.1999 describes services of an advertising agency as designing, visualizing, conceptualizing etc.

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".

Therefore, the definition of 'advertising agency' cannot be read literally and out of context, if done so then every person some way connected with an advertisement will be advertising agency That cannot be and is not the coverage of the Service Tax envisaged In the present case, one cannot ignore term being defined i.e. 'advertising agency' and proceed to levy service tax on

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(i) any commercial concern

(ii) providing service connected with making. preparation, display or exhibition of advertisements.

If the definition is read in isolation and in an ail encompassing manner out of context, then any person/company employing cameraman connected with shooting of advertisement film will become an advertising agency. A caterer supplying tea ana biscuits during the production of advertising film with also become a person connected with preparation of advertisement and became an advertising agency. Similarly, a lawyer advising whether advertising film with be violating copyright law or other laws relating to obscenity etc would be treated as advertising agent. Similarly a broadcaster (on radio or television) of an advertisement will become an advertising agency, or a cinema hall flashing an advertisement or newspaper/magazine publishing an advertisement will become an advertising agency Such absurdities, from an interpretation have to be avoided, the term 'service connected with used in the definition of "Advertising Agency" is to be understood in context of and in a restrictive manner.

5. In view of the foregoing and in the facts and circumstances of this case, we find that appellant has made out a case in his favour and the appeal needs to be accepted. Accordingly, the impugned order is set aside and appeal is allowed with consequential relief if any.

(Dictated in Court)

(C.J. Mathew)
Member (Technical)
(M.V. Ravindran)
Member (Judicial)

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