

In the Customs, Excise & Service Tax Appellate Tribunal
West Block No.2, R.K. Puram, New Delhi-110066

Appeal No.ST/544/2011

(Arising out of Order-in-Original No.13/SJS/CST(Adj)/2010 dated 31.12.2010
passed by Commissioner of CE(Adj.), New Delhi)

CST Delhi ...Appellant

Vs

M/s IPAN ...Respondent

Appearance:

Present for the Appellant : Shri Sanjay Jain, AR

Present for the Respondent : Shri S.K. Pahwa, Advocate

Coram:

HON'BLE JUSTICE (DR) SATISH CHANDRA, PRSIDENT

HON'BLE MR B. RAVICHANDRAN, MEMBER (TECHNICAL)

Date of hearing: 17.01.2018

Date of decision: 24.01.2018

Final Order No.50306/2018

Per B. Ravichandran,

The Revenue is in appeal against order dated 31.12.2010 of Commissioner (Adj.), Service Tax, Delhi. The brief facts of the case are that the respondent are engaged in various business activities, some of which are liable to Service Tax under different categories. The dispute in the present appeal relates to Service

Tax liability of the respondent with reference to certain public relation activities carried-out by them for their clients. The Revenue entertained a view that these are liable to be taxed under BAS. The respondent contested the demand on the ground that wherever the amount received is for brand promotion, they were discharging Service Tax under BAS. 'Public Relation Management Service' was specifically introduced as a taxable service w.e.f. 01.05.2006. Thereafter, the respondent were discharging Service Tax on their activity of Public Relation Service also.

2. A perusal of the impugned order reveals that tax liability of the respondent for the activities mainly in connection with public relation has been examined, in detail, by the original authority. The services, now sought to be taxed under BAS, are 'media monitoring services', in the nature of analysis and/or copies of media contents of interest to the clients, news and views, relating to scientific and technological advancements pertaining to the products and services being dealt with by their clients, business decisions of their competitors, policies of the Government impacting the business, take-over bid, stock market analysis, etc. The original authority held that these activities are not directly or indirectly relating to business promotion for marketing of goods/services and, as such, are

not covered by the tax entry in BAS. The original authority held that 'media monitoring service' is only for broadening the knowledge of the client. Though the said inputs given by the respondent will be used in the business of the clients, the same cannot be considered as an activity in connection with sales promotion.

The finding of the original authority relevant to the case is as below:

“3.1.3. It is for the revenue to prove that a particular activity of a service provider is covered within the definition of a taxable service. It is well accepted rule of interpretation of taxing statutes that in determining the liability of a subject to tax one must have regard to the strict letters of the law. If the subject falls strictly within the provisions of law, the subject can be taxed. If, on the other hand, the subject is not covered within the four corners of the taxing statutes, no tax can be imposed by inference or by analogy or by trying to read into the intention of the legislature. No taxing statutes can be interpreted on any presumptions or assumptions. In paragraph 4 of the show cause notice lots of presumptions and assumptions have been drawn to show that the activities of IPAN were for the promotion or marketing of the goods or services of the clients of IPAN. It has been alleged in paragraph 4 of the show cause notice that IPAN had not paid service tax on a portion of the so-called media monitoring services.

It has been alleged that the clients of IPAN were commercial concerns either dealing in manufacture and sale of their products or in service sector and the main objective was to increase or enhance the sale that is to say to make more profits hence the entire public relations activities were related either the promotion or marketing of goods or services of the clients. Not a shred of evidence has been placed on record to support these assumptions and presumptions. Not a single agreement between IPAN and their clients has been examined to support the allegation that the real purpose of public relations exercise was to promote the sale of goods or services of the clients. The absence of evidence militates against all the presumptions and assumptions drawn in the show cause notice. It was required to be shown on the basis of incontrovertible evidence that the activities of public relations were in fact meant for promoting or marketing the goods or services provided by the client. IPAN cannot be saddled with the liability of service as only by way of inference or presumptions .

3.1.4 It has been correctly contended by IPAN that if the entire gamut of 'public relations service' was covered under the business auxiliary service, there was no reason for the legislature to enact another category of taxable service, i.e. 'public relations management service'. It is a matter

of fact that notwithstanding the introduction of public relations service as taxable service with effect from 1st May, 2006, the definition of business auxiliary serviced has not changed. The activities of public relations, thus, came under the service tax net from 1st May, 2006. Only activities mentioned under sub-clauses (i) to (vi) of Section 65 (19) of the Act'94 were to be classified as 'business auxiliary service' and other activities of public relations were to be classified as 'public relations management service' with effect from 1st May, 2006. It is an accepted fact in the show cause notice that with effect from the 1st May, 2006, IPAN had been paying proper service tax on all their public relations earning."

3. In the face of the above findings, there is no sustainable ground in the appeal by the Revenue. The Revenue contends that various 'media monitoring services', arranging press conference, interviews, education workshop, contact programme, etc. will directly or indirectly have relationship to the enhancement of sales and promotion of the product/services of the client. We are not convinced with such reasoning proposed in the appeal. It is clear that the 'media monitoring service', though incidental, may help the client to formulate certain policies to help them improve their business apparently has no direct nexus to

such sales promotion. Arranging interviews or press conference can be for various reasons like disclosing financial performance or clarifying certain issues to the public. As such, the presumption of the Revenue, that 'media monitoring service' and similar such activities are to be taxed under BAS, is not sustainable. Such public relation activities are subsequently brought for tax liability w.e.f. 01.05.2006 without amending any of the previous tax entries including BAS. As such, we find no reason to interfere with the impugned order. The appeal by Revenue is dismissed.

(Pronounced in Court on 24.01.2018)

(Justice (Dr) Satish Chandra)
President

(B. Ravichandran)
Member(Technical)

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