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CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, MUMBAI
REGIONAL BENCH

Excise Appeal No. 85186 of 2016

(Arising out of Order-in-Original No. Belapur/12/Taloja/R-III/Commr/SFA/2015-16 dated 30.10.2015 passed by the Commissioner of Central Excise, Belapur)

M/s. Kellogg India Pvt. Ltd. **Appellant**
Plot No. L2 & L3, MIDC,
Taloja Main Road, Taluka Panvel,
Dist. Raigad 410 208.

Vs.

Commissioner of CGST & CE, Belapur **Respondent**
1st Floor, CGO Complex, CBD Belapur,
Navi Mumbai 400 614.

WITH

Excise Appeal No. 87544 of 2016

(Arising out of Order-in-Original No. Belapur/21/Taloja/R-III/Commr/SFA/2016-17 dated 29.08.2016 passed by the Commissioner of Central Excise, Belapur)

M/s. Kellogg India Pvt. Ltd. **Appellant**
Plot No. L2 & L3, MIDC,
Taloja Main Road, Taluka Panvel,
Dist. Raigad 410 208.

Vs.

Commissioner of CGST & CE, Belapur **Respondent**
1st Floor, CGO Complex, CBD Belapur,
Navi Mumbai 400 614.

AND

Excise Appeal No. 87801 of 2019

(Arising out of Order-in-Original No. 07/SK/Commr/RGD/2019-20 dated 20.06.2019 passed by the Commissioner of CGST & Central Excise, Belapur)

M/s. Kellogg India Pvt. Ltd. **Appellant**
Plot No. L2 & L3, MIDC,
Taloja Main Road, Taluka Panvel,
Dist. Raigad 410 208.

Vs.

Commissioner of CE & ST, Raigad **Respondent**
4th Floor, Kendriya Utpad Shulk Bhavan,
Plot 01, Sector 17, Khandeshwar,
Raigad 410 206.

Appearance:

Shri Gajendra Jain with Shri Rajesh Ostwal, Advocates, for the Appellant
Shri Sydney D'Silva, Additional Commissioner, Authorised Representative for the Respondent

CORAM:

HON'BLE MR. SANJIV SRIVASTAVA, MEMBER (TECHNICAL)
HON'BLE MR. AJAY SHARMA, MEMBER (JUDICIAL)

Date of Hearing: 19.07.2022
Date of Decision: 27.09.2022

FINAL ORDER NO. A/85889-85891/2022

PER: SANJIV SRIVASTAVA

These appeals are directed against the orders- in-original of Commissioner of Central Excise, Belapur, Navi Mumbai as detailed below in table:

Appeal No.	E/85186/2016	E/87544/2016	E/87801/2019
Period of dispute	Apr 2010 to Nov 2014	Dec 2014to Oct 2015	Nov2015 to Jun 2017
SCN date	30.04.2015	23.12.2015	28.11.2017
OIO date	30.10.2015	29.08.2016	20.06.2019
Credit in dispute	Rs. 23,80,16,095/-	Rs. 7,56,64,158/-	Rs. 14,05,10,491
Penalty Imposed	Rs. 11,90,08,048/-	Rs. 75,66,415/-	Rs. 1,40,51,049/

2.1 Appellant is engaged in the manufacture of breakfast cereals and avails the CENVAT credit of excise duty paid on inputs and capital goods and service tax paid on input services used in relation to the manufacture of their final products.

2.2 The appellants entered into an agreement with M/s. Group M Media India Private Limited (GMIPL) for advertisement of their final products in various media such as TV channels. GMIPL has a division by the name of MindShare in Mumbai. GMIPL/ MindShare in turn entered into agreement with the TV channel (broadcaster) for broadcasting the advertisement of the appellants' final products. As per the agreement, the TV

channels raised invoices on GMIPL/ MindShare for broadcasting charges along with service tax thereon. The invoice also mentions the appellants' name as the client i.e., the recipient of the broadcasting service.

2.3 As per the above arrangement, GMIPL raised two separate invoices on the appellants in respect of the following:

(a) commission/agency fees along with service tax thereon; and

(b) reimbursement of TV channel cost (broadcasting charges plus service tax mentioned in the invoice raised by TV channel).

2.4 The invoice raised by GMIPL on the appellants for reimbursement of TV channel cost is basically a compilation of the invoices raised by TV channels on GMIPL. The invoice raised by GMIPL is accompanied by the corresponding invoices raised by TV channels.

2.4 The appellants made payment of the amounts/charges mentioned in the aforesaid two types of invoices raised by GMIPL and took CENVAT credit of the service tax paid by them.

2.5 Revenue was of the view that invoices of GMIPL are not valid documents for taking credit as they do not pay the service tax after taking credit of the tax paid by the broadcaster. Revenue also objected to credit of Rs.18,54,966/- taken by the Appellants as the invoices against which the credit was taken were raised on godowns, offices & C&F agents, for the reason that these places do not have ISD registration and the invoices bear the address of Head Office.

2.6 According to the department, the appellants suppressed the fact of availment of aforesaid input service credit from the department with intent to avail inadmissible credit and utilize the same for payment of excise duty on the final product. According revenue after undertaking the investigations issued show cause notice dated 30.04.2015 asking the appellants to show cause as to why:

(a) the wrongly availed CENVAT credit totally amounting to Rs 23,80,16,095/- (Rs 23,61,61,129/- as detailed in Annexure 'A' + Rs 18,54,966/- as detailed in Annexure 'B') (Rupees Twenty Three Crore Eighty Lakh Sixteen

Thousand and Ninety Five only) during the period April 2010 to November 2014 should not be demanded and recovered from them under Rule 14 of the CENVAT Credit Rules, 2004 read with erstwhile proviso to Section 11A(1) and now Section 11A(5) of the Central Excise Act, 1944, w.e.f 08.04.2011;

(b) Interest at the appropriate rate should not be demanded and recovered from them under Rule 14 of the CENVAT Credit Rules, 2004 read with erstwhile Section 11AB and now Section 11AA of the Central Excise Act, 1944, w.e.f08.04.2011;

(c) Penalty should not be imposed upon them under Rule 15 of the CENVAT Credit Rules, 2004 read with erstwhile Section 11AC of the Central Excise Act, 1944.

2.7 Two more periodical show cause notices dated 23.12.2015 and 28.12.2017 were issued to the appellant for denial of the CENVAT Credit for same reason upto 30.06.2017

2.8 These show cause notices have been adjudicated by the impugned orders referred in para 1 above. Aggrieved appellants have filed these appeals.

3.1 We have heard Shri Gajendra Jain and Shri Rajesh Ostwal, Advocates for the appellant and Shri Sydney D Silva, Additional Commissioner, Authorized Representative for the revenue

3.2 Arguing for the appellant, learned counsel submits that

- The appellants have correctly taken cenvat credit of service tax paid on the broadcasting service received from various TV channels. The sole finding given by the Commissioner in the impugned Order-in-Original for denial of cenvat credit is that the invoices issued by GMIPL are not valid documents for taking credit since GMIPL is neither taking credit on the input services nor paying the service tax mentioned in their invoices.
- The appellants took credit of service tax paid on broadcasting service on the basis of invoices raised by GMIPL read with the corresponding invoices raised by TV channels on GMIPL/MindShare. The invoice raised by

GMIPL on the appellants for reimbursement of TV channel cost is nothing but a compilation of the invoices raised by TV channels. The invoices issued by TV channels for provision of broadcasting service are proper documents specified in Rule 9(1)(f) of Cenvat Credit Rules, 2004.

- The invoices raised by TV channels on GMIPL/MindShare for broadcasting charges clearly specifies the name of the appellants name as the client i.e. the recipient of the broadcasting service; All the relevant particulars are mentioned in the invoices. Therefore, there is no irregularity in the invoices in question and the invoices comply with the requirements of Rule 4A of Service Tax Rules, 1994.
- The practice of taking cenvat credit on broadcasting service is backed by the contractual agreement between the appellants and GMIPL. This is also the practice prevalent in the industry.
- Issue is squarely covered in Hon'ble Tribunal in Zapak Digital Entertainment Ltd.[2017 (49) STR 455 (T)], which has been affirmed by the Hon'ble Bombay High Court as reported at 2018 (9) TMI 759.
- For this they also rely on the following decisions:
    - Indian Oil Corpn Ltd. [2014-TIOL-1246-CESTAT-MUM]
    - PeakatanaPvt. Ltd. [2018 (9) TMI 1136-CESTAT CHENNAI]
    - Career Point Info Systems Ltd. [2019 (2) TMT 768-CESTAT New Delhi
    - Power Soap Ltd. [2018(7) TMI 254 - CESTAT CHENNAI]
    - Jyoti Laboratories Ltd. [2015(11) TMI 1556 - CESTAT CHENNAI]
    - Ultratech Cement Ltd. [2017(11) TMI 152 - CESTAT CHENNAI]
- No proceeding has been initiated by the service tax department against GMIPL for non inclusion of the broadcasting charges in the taxable value for discharging

its service tax liability. Therefore, there is no discrepancy in the invoices issued by GMIPL to the appellants.

- GMIPL has fulfilled all the conditions of being a "pure agent" as far as provision of broadcasting service is concerned. GMIPL is, therefore, correct in not including the broadcasting charges in the taxable value for discharging its service tax liability and hence, there is no discrepancy in the invoicing done by GMIPL. The appellants rely on the Circular F. No. 341/43/96-TRU dated 31.10.1996.
- The appellants have correctly taken cenvat credit of service tax paid on the Commission/agency fees charged by GMIPL. There cannot be any reason to deny this credit. Reliance is placed on the following decisions:
  - Coca Cola India Pvt. Ltd. [2009 (242) ELT 168 (Bom.)]
  - Novozymes South Asia Pvt. Ltd. [2015 (38) STR 204 (T)]
  - M.K. Industries [2013 (31) STR 59 (T)]
- Credit cannot be denied to the appellants on the ground that the invoices on the basis of which such credit has been taken bear the address of the head office. The Head Office of the appellants was not registered as an ISD for distribution of cenvat credit during the relevant time, however, the same will only amount to a procedural lapse and such defect is remediable in nature. Reliance is placed on the following decisions:
  - Doshion Ltd. [2013 (288) ELT 291 (T)] affirmed by the Hon'ble High Court at [2016 (2) TMI 183 (Guj.)] and (affirmed by Hon'ble Supreme Court reported at 2015(8) TMI 439 SC
  - Tide Water Oil Co. (India) Ltd [2022 (2) TMI 1069 – CESTAT]
  - National Engineering Industries [2015 (9) TMI 1035 - CESTAT DELHI]
  - Samita Conductors Ltd. [2012 (278) ELT 492 (T)]
  - Demosha Chemicals Pvt. Ltd [2014 (34) STR 758 (T] (Refer page 72 of the case law compilation)

- Hindustan Zinc Ltd. [2013 (291) ELT 464 (T)].
- Biotor Industries Ltd. [2018 (10) GSTL 34 (T)]
- Greaves Cotton Ltd. [2014 (8) TMI 654 - CESTAT CHENNAI]
- SGS India Pvt. Ltd. [2011 (270) ELT 115 (T)]
- Jai Chemicals Vs. CCE [2015 (40) STR 345 (T)].

- Extended period of limitation could not have been invoked.
- Interest cannot be demanded, as demand itself is not sustainable. Penalty is also not imposable for the reasons stated above.

3.3 Arguing for the revenue learned authorized representative while reiterating the findings in the impugned order submits:-

- The Appellants have not correctly taken Cenvat Credit of Service Tax paid:
- Group M Media India Pvt. Ltd (GMMIPL), a service provider of the Appellants is not availing any credit of input services availed for providing services to the Appellants. Also they are neither paying service tax shown in their invoices through GAR/ challan nor paying by utilizing credit availed. NO evidence to that effect has been found submitted by the Appellants.
- Further in their written submission the Appellants have stated that, they are not required enquire whether Group M Media India Pvt., is discharging Service Tax or not.
- Rule 9(5) of the Cenvat Credit Rules, 2004, is very much clear that the burden of proof regarding the admissibility of the Cenvat credit shall lie upon the manufacture or provider of output services taking such credit.
- It is the responsibility of the Appellants to ensure as to whether Group M Media India Pvt., has discharged service tax liability in his capacity of service provider before taking cenvat credit of service tax paid on advertising services.
- Even though the Appellants have paid the full service tax amount to them in good faith as admitted by the Appellants in their written submission, the Appellants failed to produce documentary evidence in justification about

discharging service tax liability to the government by M/s Group M Media India Pvt. Ltd.

- Hence, the invoices/bills issued by M/s Group M Media India Pvt. to the Appellants are not valid documents for availing the cenvat credit since they have not discharged service tax liability in the capacity of service provider.
- Hence, the entire service tax credit availed on the basis of such invalid documents by the Appellants is not admissible to them and required to be paid/ reversed from them.
- In the case of Quadrant Communications Ltd v/s CCE. Pune-III [2012(26) S.T.R. 33 (Tri. Mumbai)] it has been held that:
    - Paying bills of TV channels, cinema houses, hoarding suppliers, and subsequently recovering it from their clients - Agreement with client stipulating that expenses incurred on their behalf will be billed to client with commission at rate of 10% of actual cost - Client paying to agency in advance for payments to be made to others - HELD : Agency was not working as pure agent of client - Agency was liable to pay Service tax on gross amount charged from their clients in respect of Advertising Agency services rendered - Plea that amount included in bills raised in addition to commission charged was reimbursement of expenses actually paid by advertising agency, rejected.
- The decision in case of Zapak Digital Entertainment Ltd is distinguishable and has been distinguished Para 10 & 11 of the impugned order dated 20.06.2019 in Appeal No E/87801/19.
- Since there is an involvement of M/s RICPL in the entire transactions M/s GMIPL have not acted as a 'Pure Agent. The expenditure and costs have been incurred by M/s RICPL who have been issued an invoice by the Broadcasters. A compilation of such invoices is then endorsed and sent to Kellogg by GMIPL by preparing a separate invoice.

4.1 We have considered the impugned orders along with the submissions made in appeal and during the course of arguments:

4.2 In the present case we are referring to the impugned order dated 30.10.2015 subject matter of Appeal No E/85186/2016. For confirming the demand commissioner has in impugned order recorded as follows:

15. I find that, in the present Show Cause cum Demand notice, following two allegations are made;

i) The assessee has appointed M/s. Group M Media India Pvt. Ltd. for rendering advertising service, Said advertisers have a group company called M/s. Result India Communication Pvt. Ltd., who obtains services from various TV channels for broadcasting advertisement of Kellogg products. The said TV channels pay service tax and issue service taxable invoices in the name of M/s Result India Communication Pvt. Ltd. It has been observed that the assessee avails CENVAT credit on input services on the strength of invoices issued by M/s Group M Media India Pvt. Ltd. The said invoices appeared to be compilation of bills raised by Channels raised in the name of M/s Result India Communication Pvt. Ltd. On enquiry with M/s Group M Media India Pvt. Ltd., it was revealed that they are not availing any credit of input services availed for providing services to the assessee. It was also submitted by then that they are neither paying service tax shown in their invoices through GAR 7 challan nor paying by utilizing credit availed. As such it appeared that invoices raised by M/s Group M Media India Pvt. Ltd are not valid documents for availing credit.

ii) the assessee availed CENVAT credit op input services on the strength of invoices raised on their various offices, godowns, C&F Agents etc. It was observed that these invoices bore address of their Head Office at Powai. Since it appears that the assessee has not obtained ISD registration at said places where they are availing services

to pass on the CENVAT credit, said invoices are not eligible for availing CENVAT credit.

In view of the above, the issue to be decided in the present case before me is as under:

a) whether the invoices issued by M/s Group M Media India Pvt. Ltd., in the name of the assessee are admissible document in terms of Rule 9(1) of Cenvat Credit Rules, 2004 and also Rule 4A(1) of the Service Tax Rules, 1994 for availing cenvat credit?

b) Whether the Cenvat credit of service tax availed by the assessee on the strength of invoices issued in the name of assessee's various offices, godowns, C&F Agents without obtaining the ISD registration at said places, is admissible to the assesses.

……..

25. However, it has been alleged in the SCN that, M/S Group M Media India Pvt. Ltd., are not availing any credit of input services availed for providing services to the assessee, Also they Are neither paying service tax shown in their invoices through GAR 7 challan nor paying by utilizing credit availed. In this context I find that, as per Rule 5 of the Service Tax (Determination of Value) Rules, 2006, where any expenditure or costs are incurred by the service provider in the course of providing taxable services, all such expenditure or costs shall be treated as a consideration for the taxable services provided or to be provided and shall be included in the value for the purpose of the charging service tax on the said service. The value added tax practiced in India is on invoice basis. The service tax liability has to be discharged on the gross amount charged to the client and the service provider can avail service tax/ excise duty paid on the inputs or input services used in relation to the provision of output service. Rule 5 of the Service Tax (Determination of Value) Rules, 2006 makes it abundantly clear that where any expenditure or costs are incurred by the service provider in the course of providing service, all such expenditure or costs shall be treated as consideration for the taxable service provided and

shall be included in the value for the purpose of charging service tax on the said service, Therefore, in die instant case, the Service Provider with whom the assessee has made a contract, viz., M/s Group M Media India Pvt. Ltd., are liable to pay service tax on the gross amount charged from client in respect of the advertising agency services rendered. However, Group M Media India Pvt. Lid, shall be eligible to take credit of the service tax paid on input service used in relation to the provision of this output service.

26. However, I find in the instant case that, Group M Media India Pvt. Lid, a service provider of the assessee are not availing any credit of input services availed for providing services to the assessee, Also they are neither paying service tax shown in their invoices through GAR 7 challan nor paying by utilizing credit availed. No evidence to that effect has been found submitted by the assessee in their defence on record. Further, in their written submission the assessee has stated that, they are not required to enquire whether Group M Media India Pvt., is discharging Service Tax or not. I do not find any merit in the assessee's contention because Rule 9(5) of the Cenvat Credit Rules, 2004, is very much clear that the burden of proof regarding the admissibility of the Cenvat credit shall lie upon the manufacture or provider of output services taking such credit. Il was the responsibility of the assessee to ensure as to whether Group M Media India Pvt., has discharged service tax liability in his capacity of service provider before taking cenvat credit of service tax paid on advertising services. Even though the assessee has paid the service tax full amount to them in good faith as admitted by the assessee in their written submission, the assessee failed to produce documentary evidence in justification about discharging service tax liability of M/s Group M Media India Pvt. In view of this, I hold that the invoices/bills issued by M/s Group M Media India Pvt., to the assessee are not valid documents for availing the cenvat credit since they have not discharged service tax liability in the capacity of service provider. Hence, the entire service tax credit availed on the basis of such invalid documents by the assessee is not admissible to them and

required to be paid/ reversed from them, In support my view, I rely on the decision of Tribunal Mumbai in the case of Quadrant Communications Lid v/s CCE, Pune-III (2012 (26) S.T.R. 33 (Tri.-Mumbai)]

27. further find that the decision of the Tribunal in the case of M/s Indian Oil Corporation Lid v. CCE, Mumbai-II (2014-TIOL-1246-CESTAT-MUM), which has been referred by the assessee and stated that the same is squarely applicable in the present case. In this connection I find that the said case is different from the case in hand because it was the case of admissibility of service tax credit paid by the broadcasting agency to the advertising agency engaged by applicant whereas the present case is about the admissibility of credit of service lax not paid by the advertising company. Hence. I do not find any merit in this regard put forth by the assessee

28. In view of the above facts, I hold that the assessee has not satisfied all the conditions as per Rule 9(1) of Cenvat Credit Rules. 2004 and Rule 4A (1) of Service Tax Rules 1994 i.e. receipt of eligible input services. availment of cenvat credit on the strength of specified documents, and payment for value of services, including Service Tax thereon. Accordingly,! hold that the cenvat credit of service tax amount of Rs.23,61,61,129/- availed by the assessee during the period from April 2010 to November 2014 as detailed in Annexure A to the show Cause Notice in question is not admissible to the assessee.

……

31. In this connection, I find that, under Notification No. 26/2005-ST dated 07/06/2005; "Input Service Distributor are required to obtain registration with effect from 16/06/2005 as specified by the Central Government under Section 69(2) of Finance Act, 1994. For the purpose of registration of 'input service distributor', Central Government has issued Service Tax (Registration of Special Category of Persons) Rules, 2005 vide Notification No.27/2005-ST., dated 07/06/2005. Under clause (8) of Rule 9(1) of Cenvat Credit Rules, 2004, an invoice issued by input service distributor under Rule, 4A of the Service Tax Rules, 1994. is specified as valid duty paying document for

availing cenvat credit. As per Rule 4 (3A) of the Service Tax Rules, 1994, lead Office of the registered manufacture is required to be registered as Input Service Distributor. I find that the assessee has availed cenvat credit on the invoices issued by the Head Office during the relevant time. I also find that, assessee has not given any documentary evidence to show that the head office of the assessee situated at Powai is duly registered as 'Input Service Distributor justify the eligibility of such cenvat credit availed by them.

32. Hence, in view of the above, I hold that, the invoices issued by the Head Office of the assessee, prima facie, could not be valid/ correct documents for availing the cenvat credit, being not mentioned at Rule 9 of the Cenvat Credit Rules, 2004. Further, I find that, in terms of Rule 9(5) of the Cenvat Credit Rules, 2004, the burden of proof regarding the admissibility of the Cenvat Credit shall lie upon the manufacturer or provider of output service taking such credit. In this connection, I rely upon the decision of CESTAT, Kolkata given in the case of M/s Cement Manufacturing Company Lid., v/s CCE & ST, SHILONG [2014(1) ECS (178)(Tri-Kol.). wherein it has been held by the Tribunal that, invoices issued by the Head Office, prima facie. could not be valid/correct documents for availing the cenvat credit, being not mentioned at Rule 9 of Cenvat Credit Rules, 2004. I do not find to consider the case laws relied upon by the assessee in this regard us the same are issued prior to issue of the CESTAT, Kolkata's order referred to above.

33. In view of the above, I hold that the cenvat credit amounting to Rs. 18,54,966/- being the credit taken on the invoices issued by the Head Office without registration as Input Service Distributor, is not admissible to the assessee and required to be recovered from them alongwith interest under the provisions of Rule 14 of the CENVAT Credit Rules'2004 read with erstwhile proviso to Section 11A(1) and now Section 11A(5) of the Central Excise Act'1944 w.e.f. 08.04.2011."

4.3 Commissioner has in the impugned order as per para 15 framed two issues for consideration and has recorded his findings on these issues as detailed above. For the consideration

of the first issue framed by the Commissioner we reproduce the sample invoices on strength of which the appellant have taken the disputed credit:

MINDSHARE

Group M Media India Private Limited

Commerz, 8th Floor,
International Business Park,
Oberoi Garden City, Off W. E. Highway,
Goregaon (East), Mumbai - 400 063

T +91 22 4239 6888
F +91 22 4239 6931

TV BILL

Page No : 1

Client : KELLOGGS INDIA PVT LTD
PLOT NO.L2&13,TALOJA, MIDC, RAIGAD DIST.,
MAHARASHTRA STATE. PIN 410 208.
Pin Code - 410208 [MAHARASHTRA]
Brand : K PAK

Activity Period : Nov - 2011
Estimate No : MM2/880/2011
Campaign : k pak theme nov - dec 2011

Bill No : B7/8/319/11
Bill Date : 22-DEC-11
Due Date :

S/No	Supplier bill no	Mon Rep No	Producer	Channel	Program	Day	Time	Spot Date	Duration	Rate	Gross	Direct	Chargeable
1	2012/7/60/025107	TC	UTV SOFTWARE COMMUNICATIONS LTD	SUN TV	ANUPALLAVI	WED	12:30	30-NOV-11	15	10,000.00	15,000.00	0.00	15,750.00
2	2012/7/60/025868	TC	UTV SOFTWARE COMMUNICATIONS LTD	SUN TV	NAGAMMA	SAT	21:30	26-NOV-11	15	14,000.00	21,000.00	0.00	17,850.00
										Total :	36,000.00	0.00	33,600.00
										Reimbursement of Broadcasting Charges		34,600.00	
										Total :			33,600.00
										Service tax on Broadcasting charges @ 10 %			3,360.00
										Primary Education Cess on service Tax on Broadcasting charges @ 2%			67.20
										Secondary & Higher Secondary Cess @ 1 %			33.60

Amount in Words : Rupees Thirty-Three Thousand Seven Hundred Fifty-One And Paise Eighty Only

Total Payable Amount : 33,751.80

For Group M Media India Private Limited

E. & O. E.

Mindshare A Unit of Group M Media India Private Limited • Registered Office: Commerz, 8th Floor, International Business Park, Oberoi Garden City, Off W. E. Highway, Goregaon (East), Mumbai 400 063. • All Taxes and levies are charged at the prevailing rates in force. IMPORTANT: (1) Payment to be effected within 30 days. (2) Interest at the rate of 18% will be charged on all the bills not settled on due date. (3) Any objection on this bill should be raised within 7 days specific reason within 7 days of receipt. No objection will be entertained thereafter. (4) In case of dispute only Mumbai courts have jurisdiction. (5) Payment by cross cheque/draft only in favour of Group M Media India Private Limited.

CHECKED BY

P lo.: AACCM7365H • PAN Based Service Tax Number: AACCM7365HST001 • Category: Advertising Services

MINDSHARE

Group M Media India .

Commerz, 8th Floor,
International Business Park,
Oberoi Garden City, Off W. E. Highway,
Goregaon (East), Mumbai - 400 063

TV BILL

3812140

Client : KELLOGGS INDIA PVT LTD
PLOT NO. L2 & L3, TALOJA, MIDC, RAIGAD DIST.,
MAHARASHTRA STATE. PIN 410 208,
Pin Code - 410208 [MAHARASHTRA]

Brand : K PAK

Activity Period : Nov - 2011
Estimate No : MM2/880/2011
Campaign : k pak theme nov - dec 2011

Bill No : BT/82619/11
Bill Date : 22-DEC-11
Due Date :

SrNo	Supplier bill no	Mon Rep No	Producer	Channel	Program	Day	Time	Spot Date	Duration	Rate	Gross	Direct	Chargeable
1	2012/1600026107	TC	UTV SOFTWARE COMMUNICATIONS LTD	SUN TV	ANUPALLAVI	WED	12:30	30-NOV-11	15	10,000.00	15,000.00	0.00	12,750.00
2	2012/1600025888	TC	UTV SOFTWARE COMMUNICATIONS LTD	SUN TV	NAGAMMA	SAT	21:30	26-NOV-11	15	14,000.00	21,000.00	0.00	17,850.00
										Total :	36,000.00	0.00	30,600.00
										Reimbursement of Broadcasting Charges		30,600.00	
										Total :			30,600.00
										Service tax on Broadcasting charges @ 10 %			3,060.00
										Primary Education Cess on service Tax on Broadcasting charges @ 2%			61.20
										Secondary & Higher Secondary Cess @ 1 %			30.60

Amount in Words : Rupees Thirty-Three Thousand Seven Hundred Fifty-One And Paise Eighty Only

Total Payable Amount : 33,751.80

P. No.: AACCM7365H • **PAN Based Service Tax Number:** AACCM7365HST001 • **Category:** Advertising Services

For Group M Media India Private Limited

Mindshare A Unit of Group M Media India Private Limited • **Registered Office:** Commerz, 8th Floor, International Business Park, Oberoi Garden City, Off W. E. Highway, Goregaon (East), Mumbai 400 063. • All Taxes and levies are charged at the prevailing rates in force. **IMPORTANT:** (1) Payment to be effected within 30 days. (2) Interest at the rate of 18% will be charged on all the bills not settled on due date. (3) Any objection to this bill should be raised giving specific reason within 7 days of receipt. No objection will be entertained thereafter. (4) In case of dispute only Mumbai courts have Judrisdiction. (5) Payment by cross cheque/draft only in favour of Group M Media India Private Limited.

CHECKED BY:

E. & O. E.

E/85186,87544/2016,87801/2019

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UTV

Original

INVOICE / TAX INVOICE

To,
RESULTS INDIA COMMUNICATIONS PVT. LTD.
801,DHEERAJ ,
KAWAL COMPLEX,
LBS MARG, NR GODREJ COMPUND.
VIKHROLI (W) ,MUMBAI 400079
MAHARASHTRA

Bill No. : 2012 / 1600026107
Bill Date : 30.11.2011
Due Date : 14.01.2012

Order Ref. : NOV2011/TVBRO/0003064/00-RO DATE- 16.11.11

PARTICULARS	AMOUNT
Program Name : ANUPALLAVI **Episode No.** : 410 **Channel Name** : Sun TV **Brand Name** : KELLOGGS K PAK **Telecast Date** : 30.11.0011 **Duration** : 15 Secs. Rate : 10000 per 10 Secs. **Client Name** : KELLOGGS INDIA LTD **Client Addr.** : PLOT NO L1 & L2, TALOJA MIDC, RAIGAD DIST., MAHARASTRA - 410205	
Total Gross Cost	15,000.00
Less Agency Commission	2,250.00
Nett Amount	**12,750.00**
Service Tax @10%	1,274.98
Education Cess on Service Tax @2%	25.50
Higher Education Cess on Service Tax @1%	12.75
Rupees Fourteen Thousand Sixty Three & Paise Twenty Three Only	₹ **14,063.23**

8 64462

ANUDHAM MEDIA INDIA PVT. LTD. RECEIVED 21 DEC 2011 MUMBAI SSC

BT/8261911 22-Dec-11

VAT TIN No. : 27770405421V CST TIN No. : 27770405421C
Service Tax Reg. No. : SRS/MUM - I/29, C.TRPP/MUM - I/02, ST/MUM/BAS/5662/2006, ST/MUM/Space for ADVT/02/2006.
PAN No. : AAACU4122G Service Tax Code : AAACU4122GST003

Notes :
1. Please make payment in favour of "UTV SOFTWARE COMMUNICATIONS LIMITED".
2. Interest @ 18% will be charged if not paid on or before due date.
3. UTV does not take responsibility / cognizance of agency relationship with ultimate client on payment terms, if any.
4. Any discrepancy in the invoice has to be brought to our notice within 15 days of the date of Invoice.
5. I / We hereby certify that my / our registration Certificate number under the above various acts and Maharashtra Value Added Tax Act, 2002 is in force on the date on which the sales of the goods specified in this Tax Invoice is made by us and that the transaction of sale covered by this Tax Invoice has been effected by me / us and it shall be accounted for in the turnover of sales while filing of return and the due tax, if any, payable on the sales has been paid or shall be paid.

* Subject to Mumbai Jurisdiction *

For UTV Software Communications Limited

UTV SOFTWARE COMMUNICATIONS LTD. MUMBAI

Authorised Signatory

68

SUN TV

Murasoli Maran Towers, 73, MRC Nagar Main Road, MRC Nagar, Chennai - 600 028

CERTIFICATE OF TELECAST

ABINAYA CREATION'S SUN TV -CHENNAI- PP
CHENNAL
NO:6, I ST LINK ST, RAGAVA REDDY
COLONY,ASHOK NAGAR
CHENNAI.-600083
INDIA.

Date of Telecast : 30.11.2011
Telecast Time : 12:30:00 PM

Program Name : Anu Pallavi
Episode No : 410

Name of the Product	Duration (In Seconds)
First Break	
HEINZ COMPLAN TODDLER - 25 SEC COMPLAN TODDLER(TAM)	25
GARNIER FRU SHAM PLUS OIL SHA + OIL H GROW SACHET EDIT	10
MTR BADAM MIX - MTR WINTER CAMPAIGN (10 SEC)	10
ODONIL - KITNA KAATEIN	15
KELLOGGS ALL BRAN - SCREAM	20
Second Break	
MTR BADAM MIX - MTR WINTER CAMPAIGN (10 SEC)	10
AMBIPUR - AMBIPUR CAR ROMANCE	30
KELLOGGS K PAK (K PAK ZZZ)	15
HEINZ COMPLAN (SHOPKEEPER 50 GM FREE)	15
TOTAL Seconds	**150**

OCL : COMPLAN NUTRI GROW,GARNIER FRUCTIES,MTR BADAM MIX,ODONIL,KELLOGGS ALL BRAN & AMBIPUR.

CCL : COMPLAN NUTRI GROW,GARNIER FRUCTIES,MTR BADAM MIX,ODONIL,KELLOGGS ALL BRAN & AMBIPUR.

This is to certify that the advertisement for the above product / service has / have been telecast on the aforesaid dates.

For Sun TV,

AUTHORISED SIGNATORY
Sun TV Network Ltd

UTV

Original

INVOICE / TAX INVOICE

To,
RESULTS INDIA COMMUNICATIONS PVT. LTD.
801,DHEERAJ ,
KAWAL COMPLEX,
LBS MARG, NR GODREJ COMPUND,
VIKHROLI (W) ,MUMBAI 400079
MAHARASHTRA

Bill No. : 2012 / 1600025888
Bill Date : 30.11.2011
Due Date : 14.01.2012

Order Ref. : RO # NOV2011/TVBRO/0003064/00

PARTICULARS	AMOUNT
Program Name : NAGAMMA Episode No. : 70 Channel Name : Sun TV Brand Name : KELLOGGS K PAK Telecast Date : 26.11.2011 Duration : 15 Secs. Rate : 14000 per 10 Secs. Client Name : KELLOGGS INDIA LTD Client Addr. : PLOT NO L1 & L2, TALOJA MIDC, RAIGAD DIST., MAHARASTRA - 410205	
Total Gross Cost	21,000.00
Less Agency Commission	3,150.00
Nett Amount	**17,850.00**
Service Tax @10%	1,785.04
Education Cess on Service Tax @2%	35.70
Higher Education Cess on Service Tax @1%	17.85
Rupees Nineteen Thousand Six Hundred Eighty Eight & Paise Fifty Nine Only	₹ 19,688.59

GROUPM MEDIA (INDIA) PVT. LTD. RECEIVED 27 DEC 2011 MUMBAI

6464 58

BT/82619/11
22-Dec-11

VAT TIN No. : 27770405421V CST TIN No. : 27770405421C
Service Tax Reg. No. : SRS/MUM - I/29, C.TRPP/MUM - I/02, ST/MUM/BAS/5662/2006, ST/MUM/Space for ADVT/02/2006.
PAN No. : AAACU4122G Service Tax Code : AAACU4122GST003

Notes :
1. Please make payment in favour of "UTV SOFTWARE COMMUNICATIONS LIMITED".
2. Interest @ 18% will be charged if not paid on or before due date.
3. UTV does not take responsibility / cognizance of agency relationship with ultimate client on payment terms, if any.
4. Any discrepancy in the invoice has to be brought to our notice within 15 days of the date of Invoice.
5. I / We hereby certify that my / our registration Certificate number under the above various acts and Maharashtra Value Added Tax Act, 2002 is in force on the date on which the sales of the goods specified in this Tax Invoice is made by us and that the transaction of sale covered by this Tax Invoice has been effected by me / us and it shall be acccunted for in the turnover of sales while filing of return and the due tax, if any, payable on the sales has been paid or shall be paid.

* Subject to Mumbai Jurisdiction *

For UTV Software Communications Limited

UTV SOFTWARE COMMUNICATIONS LTD. MUMBAI

Authorised Signatory

SUN TV

Maiavathi Maran Towers, 73, MRC Nagar Main Road, MRC Nagar, Chennai - 600028

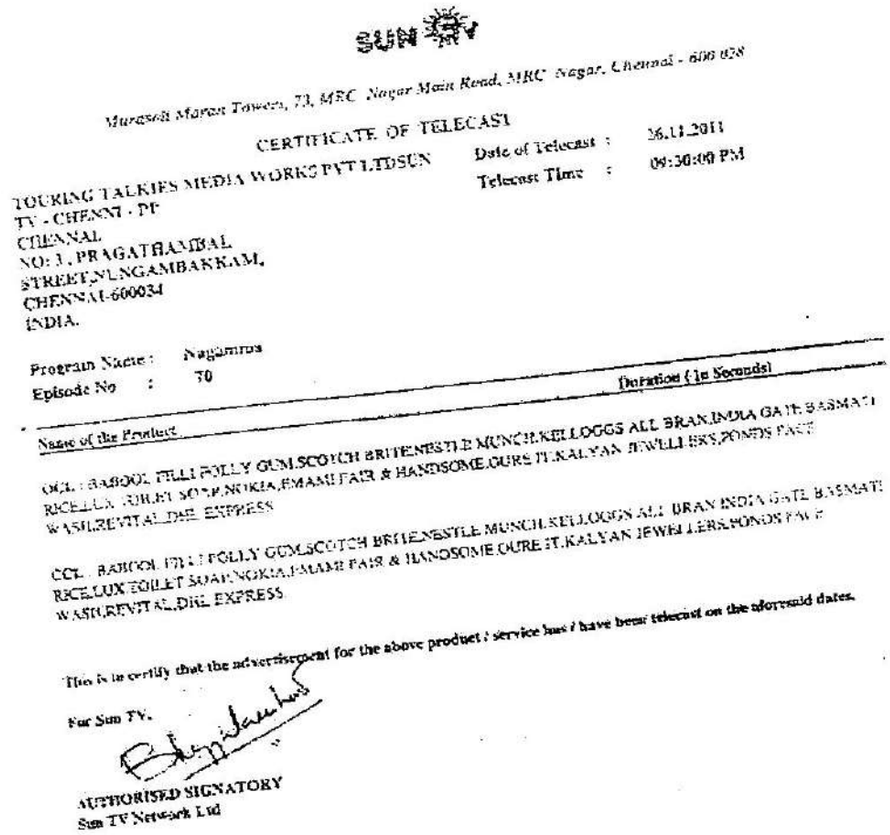
CERTIFICATE OF TELECAST

TOURING TALKIES MEDIA WORKS PVT LTDSUN TV - CHENNI - PP
CHENNAI,
NO: 3 , PRAGATHAMBAL
STREET,NUNGAMBAKKAM,
CHENNAI-600034
INDIA.

Date of Telecast : 26.11.2011
Telecast Time : 09:30:00 PM

Program Name : Nagamma
Episode No : 70

Name of the Product	Duration (In Seconds)
First Break	
SCOTCH BRITE SCRUB PAD KITCHEN QUEEN CONTEST	35
PONDS PURE WHITE FACE WASH - PONDS FAIRLADY 30 HUL	30
NESTLE MUNCH (VRIENDER(NEW)	30
NOKIA DEALER NOKIA SMART PHONE	20
LAKME SKIN CLEANSING LAKME BLAST 20	20
KELLOGGS ALL BRAN - SCREAM	20
LUX TOILET SOAP (NEW LUX SILK SOUTH 40 HUL)	40
EMAMI FAIR & HANDSOME (SURYA AKHADA) - 25	25
BIG BABOOL FILL FOLLY (FF ROCKET BALLON PROMO)	25
Second Break	
CENTERFRESH ACTISPORT (MALHAM) -	30
PURE IT MARVELLA (WARNING 40 HUL)	40
KALYAN JEWELLERS - TRUST	30
EMAMI FAIR & HANDSOME (SURYA AKHADA) - 25	25
KELLOGGS K PAK (K PAK ZZZ)	15
LAKME FRUIT MOISTURE (LSM 20 REV 2011)	20
NOKIA DEALER NOKIA SMART PHONE	20
PONDS FACE WASH PACIFIC - REV	20
REVITAL NO.1	10
Third Break	
DEL INTERNATIONAL SPECIALIST CAMPAIGN 2011 GROW	30
DOVE SHAMPOO DOVE NOC 30	30
FAIR & LOVELY FACE WASH (FAL FW)	35
KELLOGGS ALL BRAN - SCREAM	20
PEARS SOAPS DIAMOND DUST	15
INDIA GATE BASMATI RICE (INDIA GATE BASMATI RICE)	15
DOVE BATHING BAR DOVE DARE TO BARE 20 REV	20
BIG BABOOL FILL FOLLY (FF ROCKET BALLON PROMO) 10	10
PONDS PURE WHITE FACE WASH - PONDS FAIRLADY 30 HUL	30
REVITAL NO.1	10
TOTAL Seconds	660



SUN TV

Murasoli Maran Towers, 73, MRC Nagar Main Road, MRC Nagar, Chennai - 600 028

CERTIFICATE OF TELECAST

TOURING TALKIES MEDIA WORKS PVT LTDSUN
TV - CHENNI - PF
CHENNAI
NO: 1, PRAGATHAMBAL
STREET,NUNGAMBAKKAM,
CHENNAI-600034
INDIA.

Date of Telecast : 26.11.2011
Telecast Time : 09:30:00 PM

Program Name : Nagamma
Episode No : 30

Name of the Product	Duration (in Seconds)
CCL : BABOOL PELLI FOLLY GUM,SCOTCH BRITE,NESTLE MUNCH,KELLOGGS ALL BRAN,INDIA GATE BASMATI RICE,LUX TOILET SOAP,NOKIA,EMAMI FAIR & HANDSOME,OURE JEWELLERS,PONDS FACE WASH,REVITAL,DHL EXPRESS	
CCL : BABOOL PELLI FOLLY GUM,SCOTCH BRITE,NESTLE MUNCH,KELLOGGS ALL BRAN,INDIA GATE BASMATI RICE,LUX TOILET SOAP,NOKIA,EMAMI FAIR & HANDSOME,OURE JEWELLERS,PONDS FACE WASH,REVITAL,DHL EXPRESS	

This is to certify that the advertisement for the above product / service has / have been telecast on the aforesaid dates.

For Sun TV,

AUTHORISED SIGNATORY
Sun TV Network Ltd

4.4 From the perusal of the invoices issued by the broadcaster, it is quite evident that the name of the appellant appears on each and every invoice of the service provider as recipient of the service. That being so the credit taken by the appellant on the basis of the invoices issued by the broadcaster cannot be denied as the invoices clearly show the recipient of service as appellant. Further now the appellants have received these services through M/s Group M Media India Pvt. Ltd., who have enclosed the invoices of the broadcaster alongwith their invoices. M/s Group M Media India Pvt. Ltd. have facilitated the provision of Broadcasting services by the Broadcaster to the appellant and have definitely acted as *"pure agents",* for the provision of these services. Rule 5 (2) of the Service Tax (Determination of Value) Rules, 2006 reads as follows:

"(2) Subject to the provisions of sub-rule (1), the expenditure or costs incurred by the service provider as a pure agent of the recipient of service, shall be excluded from the value of the taxable service if all the following conditions are satisfied, namely:-

(i) the service provider acts as a pure agent of the recipient of service when he makes payment to third party for the goods or services procured

(ii) the recipient of service receives and uses the goods or services so procured by the service provider in his capacity as pure agent of the recipient of service;

(iii) the recipient of service is liable to make payment to the third party;

(iv) the recipient of service authorises the service provider to make payment on his behalf;

(v) the recipient of service knows that the goods and services for which payment has been made by the service provider shall be provided by the third party;

(vi) the payment made by the service provider on behalf of the recipient of service has been separately indicated in the invoice issued by the service provider to the recipient of service;

(vii) the service provider recovers from the recipient of service only such amount as has been paid by him to the third party; and

(viii) the goods or services procured by the service provider from the third party as a pure agent of the recipient of service are in addition to the services he provides on his own account

Explanation1.–For the purposes of sub- rule (2), "pure agent" means a person who–

(a) enters into a contractual agreement with the recipient of service to act as his pure agent to incur expenditure or costs in the course of providing taxable service;

(b) neither intends to hold nor holds any title to the goods or services so procured or provided as pure agent of the recipient of service;

(c) does not use such goods or services so procured; and

(d) receives only the actual amount incurred to procure such goods or services.

4.5 In view of the above in our view the denial of the credit on the invoices of M/s Group M Media India Pvt. Ltd, taken along with the invoices of the Broadcasters, is not justified. In the case of Zapak International Entertainment Ltd referred to by the Appellants, tribunal observed:

4. We have gone through the rival submissions. We find that it is not disputed that the appellants have engaged the services of an agency for advertisement. Agencies are by definition working on behalf of their client. In the instant case, the agency being an advertising agency has engaged the broadcaster for the purpose of advertisement. A perusal of the invoices clearly shows that the agency has merely acted as a conduit for money from the appellant to the broadcaster. The invoices of the broadcaster clearly show the name of advertiser as M/s. Zapak Digital Entertainment Ltd. (the appellant). Name of the advertising agency is mentioned and is an agent in the said invoices. In the said circumstances, there is no doubt that the invoices of the broadcaster in the name of Zapak Digital Entertainment Ltd. and not in the name of Mudra Radar as alleged in the notice Learned AR has relied on the decision Bench of the Tribunal in the case of Balmer Lawrie (supra). It is seen that decision of the Tribunal was overruled by the Hon'ble High Court of Gujarat in the case of Vimal Enterprises as reported in 2006 (195) E.L.T. 267 (Guj.). Learned AR has also relied on the decision of the Gujarat High Court in the case of Marigold Coatings (supra), wherein it was held that duty credit cannot be taken on the strength of endorsed invoice. It can be seen that the instant case is not a case of endorsed invoice. A perusal of invoice clearly shows that the appellant's name mentioning as a advertiser and therefore, it is an invoice issued in the name of

the appellant. The advertising agency in the instant case is only act as a conduit for payment..."

Affirming the above order Hon'ble Bombay High Court observed:

"...6. The grievance of the appellant-Revenue is that the invoices issued by the broadcaster also shows the name of the advertising agency, therefore, the respondent could not avail of the Cenvat credit on the basis of the above invoices. We find that the impugned order of the Tribunal has rendered a finding of fact that the invoices as issued by the broadcaster are in the name of the respondent. It also holds on a finding of fact - that the advertising agency is merely shown as an agent of the respondent. This finding of fact is not shown to be perverse."

4.6 Distinguishing the case of Zapak in the impugned order dated 20.06.2019 in Appeal No E/87801/19, Commissioner has observed:

10. I have also carefully gone through the judgment of the Tribunal in the case of M/s.Zapak Digital Entertainment Ltd Vs. Commissioner of Service Tax, Mumbai-II [2017(49)STR 455(Tri.-Mumbai)] and relied upon by the assessee to support their contention. In the said case M/s.Zapak Digital Entertainment Ltd have provided the services of sale of space and time advertisement. They were engaged in promoting its business by placing advertisement in various forms of Media through advertising agency such as M/s. Optimum Media Solutions. The advertising agency acted as facilitator between the broadcaster and the advertiser ie M/s. Zapak, by the broadcaster was paid by M/s. Zapak Digital Entertainment Ltd. The cenvat credit was availed by M/s.Zapak Digital Entertainment on the strength of the invoices issued by the broadcaster in favour of M/s. Zapak Digital Entertainment and also containing name of the advertising agency. After considering the submissions of both sides, the Tribunal at Para-4 of its judgment has observed as under:

"……."

On the basis of the above findings, the Tribunal has allowed the appeal. Aggrieved by the said order, the department has filed appeal before the Hon'ble Bombay High Court and vide its

judgment dated 05.09.2018, the High Court has dismissed the appeal by observing as under:

"……."

It is seen from the above judgments of the CESTAT and the Hon'ble Bombay High Court that the invoices issued by the broadcaster are in the name of the respondent i.e M/s. Zapak Digital Entertainment Ltd and that name of the advertising agency is mentioned merely as an agent of the respondent. In the instant case, credit has been taken on the invoices of advertising agency, which indicate the name of the assessee.

11. In the present case, I find that the assessee had entered into an agreement with M/s.Group M Media India Pvt Ltd., an Advertising agency for advertisement of the products manufactured by them. The advertising agency utilized the services of some TV Channels for broadcasting the advertisement. The TV Channels paid Service Tax on the broadcasting charges and raised the bills which show the name of the assessee as 'Client' and M/s. Group M Media India Pvt Ltd as the 'agency'. The Tribunal in the case of M/s. Zapak Digital Entertainment Ltd cited supra has observed that since the invoices of the broadcaster clearly show the name of the advertiser as M/s.Zapak Digital Entertainment Ltd and the name of the Advertisement agency is mentioned as Arennt in the invoice it was held that the invoices are issued in the name of M/s Zapak, that since there was no agreement between M/s.Kellog India Pvt Ltd and the broadcaster, the latter cannot issue invoice in the name of the assessee. So, the invoice is issued in the name of the Advertising agency and the purpose of mentioning the name of the client in the invoices was to identify the customer of the Advertising agency. Moreover, the assessee has not taken cenvat credit on the basis of the invoices issued by the broadcaster. They have taken credit on the basis of the invoices issued by the Advertising agency. Further, I find that the assessee has not produced any agreement, which authorize the Advertising agency to make payment to the Broadcaster on their behalf and to subsequently recover it from them. In the absence of any such documentary evidence, the Advertisement

agency cannot be considered as an 'Agent' for the purpose of making payment to the Broadcaster, Accordingly, with utmost respect, I beg to differ from the views taken by the Hon'ble Tribunal in the said case and disallow the Cenvat credit availed by the assessee on the Broadcasting charges based on the invoices issued by GMIPL."

4.7 We do not find any substance in the manner in which Commissioner has sought to distinguish the case of Zapak. On perusal of the sample invoices we have already concluded that the name of the appellant appear as client (service recipient) on the invoices issued by the Broadcaster, that being so we have held that M/s. Group M Media India Pvt Ltd., is pure agent in the provision of the service. Commissioner has not recorded any finding in this order to the contrary. As observed by us earlier the issue is squarely covered by the decision of tribunal and Hon'ble Bombay High Court in the favour of the appellant.

4.8 In the case of Indian Oil Corporation Lid [2014-TIOL-1246-CESTAT-MUM)] the facts as recorded in para 2 and the findings as recorded by the tribunal in subsequent paras are reproduced below:

"2. The appellant, M/s. Indian Oil Corporation Ltd., is a Public sector Undertaking engaged in the manufacture of petroleum products. The applicant engaged the services of four advertising agencies for preparing the advertisements for their products. The advertising agencies further engaged the services of Times Global Broadcasting Co. Ltd. for broadcasting the advertisements. The broadcasting company paid service tax in respect of taxable service provided by them and recovered the amounts from the advertising agencies. The advertising agency also raised invoices in favour of the applicant. The appellant availed credit in respect of the service tax paid on the taxable service of broadcasting done by Times Global Broadcasting Co. Ltd. The Revenue issued show cause notice for denial of such credit. The adjudicating authority denied the credit on the ground that the broadcasting company has not provided service directly to the appellant since the broadcasting company was

engaged by the advertising agency. The adjudicating authority confirmed the demand and imposed penalty.

6. We have gone through the copies of sample invoices produced by the applicant, issued by Times Global Broadcasting Co. Ltd. in the invoices it is specifically mentioned that the advertiser is Indian Oil Corporation Ltd. (applicant). Further, we find that the advertising agencies while discharging the service tax liability have not taken into consideration the expenses in respect of the advertisement in the electronic media as clarified by the Board in the circular dated 1.11.1996. For ready reference, the relevant portion of the Board Circular is reproduced below:-

"4. It is further to be clarified that in relation to advertising agency, the service tax is to be computed on the gross amount charged by the advertising agency from the client for services in relation to advertisements. This would, no doubt, include the gross amount charged by the agency from the client for making or preparing the advertisement material, irrespective of the fact that the advertising agency directly undertakes the making or preparation of advertisement or gets it done through another person. However, the amount paid, excluding their own commission, by the advertising agency for space and time in getting the advertisement published in the print media (i.e. Newspapers, periodicals etc.) or the electronic media (Doordarshan, private TV Channels, AIR etc.) will not be includible in the value of taxable service for the purpose of levy of serviced tax. The commission received by the advertising agency would, however, be includible in the value of taxable service."

7. We observe that there is no dispute in the present case that the broadcasting of advertisement has been done on behalf of the appellant and the bills have also been raised on the appellant and the appellant has borne the incidence of Service Tax on the broadcasting service. Further, while passing the order dated 30.9.2013, the adjudicating authority has caused verification of the transactions undertaken by the appellant in respect of broadcasting services and advertising agency services. After

verifying that the appellant had availed both the services and has also borne the incidence of Service Tax, he came to the conclusion that the appellant is rightly eligible for the benefit of the CENVAT Credit of the Service Tax paid on broadcasting service. The same ratio shall apply for the previous period also. Therefore, we do not find any merit in the impugned order. Accordingly, we set aside the same and allow the appeal with consequential relief, if any, in accordance with law."

In our view this decision also decides the issue in hand in favour of the appellant and the distinction sought to be made in the impugned orders cannot be sustained.

4.9 The second issue framed by the Commissioner in the impugned order is squarely covered by the decision in the case of Doshion referred to by the Appellant. Hon'ble Bombay High Court while affirming the order of tribunal observed as follows:

"7. The second objection of the Revenue as noted was with respect of non-registration of the unit as input service distributor. It is true that the Government had framed Rules of 2005 for registration of input service distributors, who would have to make application to the jurisdictional Superintendent of Central Excise in terms of Rule 3 thereof. Sub-rule (2) of Rule 3 further required any provider of taxable service whose aggregate value of taxable service exceeds certain limit to make an application for registration within the time prescribed. However, there is nothing in the said Rules of 2005 or in the Rules of 2004 which would automatically and without any additional reasons disentitle an input service distributor from availing Cenvat credit unless and until such registration was applied and granted. It was in this background that the Tribunal viewed the requirement as curable. Particularly when it was found that full records were maintained and the irregularity, if at all, was procedural and when it was further found that the records were available for the Revenue to verify the correctness, the Tribunal, in our opinion, rightly did not disentitle the assessee from the entire CENVAT credit availed for payment of duty. Question No. 1 therefore shall

have to be answered in favour of the respondent and against the assessee.'

4.10 Since we hold in favour of the appellant on merits itself we are not recording any findings on the issue of interest, limitation and penalties.

5.1 Appeals are allowed setting aside the impugned order.

(Order pronounced in the open court on 27.09.2022)

(Sanjiv Srivastava)
Member (Technical)

(Ajay Sharma)
Member (Judicial)

tvu