CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH – COURT NO. IV

SERVICE TAX APPEAL No. 54671 of 2023

[Arising out of Order in Appeal No. 01 (AK)ST/JDR/2023 dated 01/01/2023 passed by Commissioner (Appeals), Central Excise & Central Goods and Service Tax, Jodhpur (Raj)]

M/s. Raj Kumar Jain **...Appellant**
11-C Block,
Dist. Sriganganagar – 335001
(Rajasthan)

Versus

Commissioner of CGST & **....Respondent**
Central Excise – Jodhpur
G-105, New Industrial Area,
Opp Diesel Shed, Basni,
Jodhpur, Rajasthan - 342003

APPEARANCE:
Mr. Jitin Singhal, Advocate for the appellant
Mr. Kuldeep Rawat, Authorized Representative for the Respondent

CORAM : HON'BLE DR.RACHNA GUPTA, MEMBER (JUDICIAL)

Date of Hearing: **19/02/2025**

Date of Decision:**06.03.2025**

FINAL ORDER No. 50374/2025

DR.RACHNA GUPTA

The appellant in the present case is engaged in providing services falling under the category of selling of space for advertisements in print media. However, in absence of any evidence provided by the appellant, at the time of inquiry followed by investigation, department observed from the income tax returns of the appellant for the financial year 2015-16 to 2017-18 that the appellant has received a total taxable amount of Rs.3,72,91,231/- for sale of services from the various service recipients. For want of any document provided by the appellant department formed the opinion that the services rendered by appellant are of the category other than those services which are specified in negative list under section 66D of the Finance Act. Accordingly, service tax on the said amount of Rs.4925,162/- was proposed to be recovered by Show Cause Notice No.16/2020/617 dated 28.09.2020 along with the proportionate interest and the appropriate penalties. The original adjudicating authority had confirmed the demand only of Rs.3,99,142/- inclusive of secondary and higher education cess, Swatch Bharat cess and Krishi Kallyan cess alongwith the interest. Penalty of Rs.5,000/- is imposed in terms of section 77 (1) (a) of the Finance Act. The penalty ofRs.10,000/- under section 77 (2) of the Act for failing to file the ST-3 returns has been imposed. In addition, penalty of the same amount of duty confirmed (Rs.3,99,142/-) has been imposed under section 78 of the Act, however, with the benefit of reduced penalty of 25%. The appellant had preferred an appeal against the said order before Commissioner (Appeals) which has been rejected vide order-in-appeal No.01/2023 dated 02.01.2023. Being aggrieved of the said rejection, the appellant is before this Tribunal.

2. I have heard Mr. Jitin Singhal, ld. Counsel for the Appellant and Mr. Kuldeep Rawat, Authorised Representative for the respondent.

3. Ld. Counsel for the appellant has submitted that the appellant was under bona fide belief that the activity performed by the appellant is not taxable in as much as the same is covered in the negative list. Further, it is submitted that no positive

evidence has been adduced by the department to prove that the appellant has suppressed the facts with an intention to evade payment of service tax. It is further submitted that the department has also not been able to prove that the appellant has short-paid the service tax by reason of fraud; or collusion; or willful mis-statement; or suppression of facts; or contravention of any of the provisions this Chapter or the rules made there under with intent to evade payment of service tax. Hence, the extended period of limitation is not invocable. Reliance is placed on following case laws while praying for setting aside the impugned order and for the present appeal to be allowed.

(1) **Uniworth Textiles Ltd. Vs CCE, Raipur, 2013 (288) ELT 161 (SC)**

(ii) Mahanagar Telephone Nigam Ltd. Vs UOI, judgement dated 06.04.2023 in W.P. (C) No. 7542 of 2018 passed by the Hon'ble High Court of Delhi

(iii) G.D. Goenka Private Limited Vs Commissioner of CGST, Delhi South,

(iv) Pushpam Pharmaceuticals Co. Vs CCE, Bombay, 1995 (78) ELT 401 (SC);

(v) Sarabhai M. Chemicals Vs CCE, Vadodara, 2005 (179) ELT 3 (SC);

(vi) Anand Nishikawa Co. Ltd. Vs CCE, Meerut, 2005 (188) ELT 149 (SC).

4. Per contra, ld. D.R. has relied upon the case law in the case of **Rajesh vs. Assistant Commissioner of CGST and Central Excise, Chennai reported in 2023 11 CENTAX 62 (Mad.)** to impress upon that where Admittedly, assessee fails to file returns as contemplated under Rule 7 of Service Tax Rules, 1994, Department gets entitled to invoke proviso to Section 73 of Finance Act, 1994. Present being the case of suppression of facts, no case was made out for interfering with impugned Order-in-Original. Commissioner (Appeals) has rightly rejected the appeal. Present appeal is also prayed to be dismissed.

5. Having heard both the parties, I observe that the appellant is admittedly providing advertisement services to print-media. Those services fall under negative list in sub-clause (g) of section 66 (b) of Finance Act. This issue stands already decided by this Tribunal in its order in the case of **Adbur Pvt. Ltd. vs. Commissioner of Service Tax, Delhi reported as 2017 (5) GSTL 334 (Tri.-Del.).** Hence, I hold that the show cause notice had wrongly proposed the demand on the amount received for rendering services to print media. The adjudicating authorities below are held to have rightly set aside the said demand.

6. The demand of Rs.3,99,142/- has been confirmed on the amount received as commission for rendering the services. I observe that the decision of this Tribunal in the case of **Adbur Pvt. Ltd. vs. Commissioner of Service Tax, Delhi reported in 2017 (5) GSTL 334** has held that the commission received by the advertising agencies is chargeable to service tax. However, the advertising agency being a pure agent is held not liable to pay

service tax on amount payable to media companies on behalf of their clients.

7. The appellant has conceded about their liability to pay service tax on the amount of commission received by them while rendering the advertising agency service to the print media. However, still has contested the same on the ground of limitation. In alternate the demand confirmed is contested for not giving the SSI exemption benefit in terms of Notification No.33/2012 dated 20th June, 2012.

8. Foremost, I take up the ground of limitation. The invocation of extended period has been justified by the authorities below on the ground that the appellant has failed to take the service tax registration and to file their ST- 3 returns. Section 70 of the Finance Act has been invoked, however, in the light of the above discussion and the decisions considered by the adjudicating authorities below itself, the services rendered by the appellant are held to fall under the negative list. Thus, appellant had no liability to pay tax on the amount received for rendering advertisement agency service to the print media except on the amount of commission. With respect to liability on the amount of commission to the appellant has accepted their liability, however, with the submission that they were under bonafide believe about their activity to be non-taxable and under the same belief they were under impression that even the amount of commission is the part of their non-taxable income. I observe that there is no evidence on record produced by the Department to prove that the appellant had malafide intention to evade tax on the amount of

commission. The entire burden of the department remains un-discharged. The Hon'ble Apex Court has already held that the mere inaction or failure to do something does not constitute the suppression. There must be something positive produced by the department to prove suppression. I rely upon the decision in the case of **Padmini Products vs. CCE reported in 1989 (43) ELT 195** and also the decision in the case of **CCE vs. Chemphar Drugs and Liniments** reported as **1989 (40) ELT 276 (S.C.)**. In another decision titled as **Uniworth Textiles Ltd. vs. CCE, Raipur reported as 2013 (288) ELT 161 (S.C.)** it has been held as follows:-

> *"Burden to prove malafide of noticee is on department who makes the allegation. Onus to prove bonafide conduct is not on noticee even in terms of section 28 of the Customs Act.*
>
> *Mere non-payment of duties is not equivalent to collusion or willful mis-statement or suppression of facts. Otherwise there would be no situation for which ordinary limitations of six months would apply. Inadvertent payment is to be met with limitation of six months, whereas deliberate default faces limitation of five years. Some positive act has to be there on the part of appellant."*

9. In the given circumstances, the act of taking no service tax registration and of filing no returns is denied to be the ground for invoking extended period of limitation. The Show Cause Notice is, accordingly, held to be barred by time.

10. In the light of findings arrived with respect to the issue of limitation though the second point of grievance is not required to be adjudicated, however, I still observe that the original adjudicating authority itself has held in para 22 of the impugned

Order-in-Original that all the conditions of Notification No.33/2012 stands fulfilled in the instant case:

> "*Thus, I find force in the arguments of the noticee to the effect that while computing the service liability, the exemption under Notification No.33 of 2012-ST, should have been considered and accordingly, I hold that the noticee is eligible for the exemption up to the aggregate value of services of Rs.10 Lakhs.*"

11. I further observe that threshold limit of Rs.10 Lakhs is to be seen for the previous financial year. The authorities below have given the benefit of Notification No.33/2012 for financial year 2017-18 as the threshold limit for previous year (2016-17) was less than 10 Lakhs. I observe that it was less than 10 Lakhs for the financial year 2014-15, the previous year for Financial Year 2015-16. Hence the authorities below are held to have erred while not granting the benefit of Notification No.33/2012 for the financial year 2016-17 also.

12. In the light of the discussion arrived at on both the points raised by the appellant in the present appeal, I hereby set aside the present order for being passed based on the show cause notice, which is time barred. In the result, the impugned Order is set aside and appeal is allowed.

[Pronounced in the open Court on 06.03.2025]

(DR.RACHNA GUPTA)
MEMBER (JUDICIAL)

Anita