

CESTAT, MUMBAI BENCH

Ms. Katrina R. Turcotte

v.

Commissioner of Service Tax, Mumbai – I

ORDER NO. A/670/2012/CSTB/C-I

APPEAL NO. ST/387 OF 2011

OCTOBER 9, 2012

ORDER

Ashok Jindal, Judicial Member – The appellant Ms. Katrina R. Turcotte alias Ms. Katrina Kaif has filed this appeal against the impugned order wherein a demand of service tax for the period 01.05.2006 to 09.09.2004 of Rs. 2,79,24,960/- has been confirmed under Business Auxiliary Service along with interest and a penalty of Rs. 33,68,340/- under section 78, the further penalty of Rs. 2000/- under section 77 and the penalty under section 76 of the Finance Act, 1994.

2. The facts of the case are that on the basis of intelligence that the appellant through Matrix India Entertainment Consultants P. Ltd. (in short Matrix) was providing services to various companies for promotion of their products, whether manufactured directly or indirectly, or marketed or sold by these companies, by agreeing to model herself for advertisement films, TV commercials, still photographing, footage, press advertisement, outdoor, packaging and sales material including backing sheets, mobile stickers, danglers, wobblers, booklets and other printed matters and other promotional material. It was found that the appellant is providing the above services on a consideration but not paying service tax. Therefore, a show-cause notice was issued for impugned period for demanding service tax. The main allegation against the appellant is that the service provided by the appellant as above and as per the contracts entered into by her are in relation to promotion or marketing or sales of goods whether manufactured or marked by the clients and the said service is classifiable under Business Auxiliary Service as per the provisions of Section 65(105)(zzb) of the Finance Act, 1994. The appellant has entered into tripartite/quad partite contracts which involves the appellant, agent facilitator and the clients. The agent facilitator in these contract is M/s Matrix. The main allegation against the appellant is that she has providing Business Auxiliary Service to various clients and failed to discharge service tax on consideration received for such service. Therefore, three show-cause notices were issued. Thereafter adjudication took place and demands mentioned in para 1 above has been confirmed against the appellant. Aggrieved from the said order, the appellant is before me.

3. Shri Neerav Mainkar, Id. Advocate for the appellant appeared before us and submitted that appellant has acted as a model for promotion of the product of various clients and had discharged service tax liability through her agent i.e. Matrix, as per the agreement amongst the appellant, M/s Matrix and the client (service recipient), M/s Matrix had to receive the entire amount of

consideration for promotion of the product and thereafter to discharge the service tax liability on behalf of the appellant and rest of the amount was to be given to the appellant by Matrix, who are the agents for the appellant for discharging the service tax liability. As per section 65(7) of the Finance Act, 1994 the “assessee” means a person liable to pay service tax and includes its agent. There is no dispute that on the activity undertaken by the appellant, the service tax liability has been discharged by Matrix as an agent of the appellant. Therefore, the demands confirmed in the impugned order are not sustainable. He fairly agreed that the service tax has been paid by Matrix under the category of Advertisement Agency Service, that does not mean that the appellant has not discharged the service tax liability. By merely paying service tax under wrong head does not mean that the appellant has not discharged the service tax liability. Therefore, impugned order is liable to set aside.

4. On the other hand, Shri K.S. Misra, Ld. AR strongly opposed the contention of the Id. Counsel and submitted that in this case it is an admitted fact that the appellant (Ms. Katrina Turcotte) has performed the activity of promoting the product of her clients and the activity undertaken by the appellant falls under the category of ‘Business Auxiliary Service’ on which no service tax has been paid. It is a fact on record that service recipient has paid the money through Matrix to the appellant and appellant has admittedly not paid any service tax by herself. Therefore, impugned order is sustainable. He further submitted that M/s Matrix has discharged the service tax liability under the category of Advertisement Agency service as Matrix has involved in the activity of Advertisement. Therefore, the service tax paid by M/s Matrix same cannot be related to the activity undertaken by the appellant.

5. Heard both sides. Considered the submission in detail.

6. In this case, the appellant has provided the service for promotion of product by agreeing as model herself for advertisement films, TV commercials, still photographing, footage, press advertisement, outdoor, packaging and sales material etc. The revenue is of the view that as the appellant is engaged in the activity of promoting/marketing or sales of the product manufactured by her client etc., therefore, the said activity falls under “Business Auxiliary Service”. The liability of service tax has not been disputed by the appellant. The appellants contention is that appellant has appointed M/s Matrix as their agent to receive payment on behalf of the appellant from the clients and thereafter discharge the service tax liability on the above activity. These facts are also not in dispute. As per the agreements, the payments are to be made by the clients in the name of M/s Matrix and M/s Matrix has to discharge service tax liability, thereafter the balance amount was to be paid to the appellant. In this set of facts, service tax liability has been discharged by Matrix on the above said activity cannot be denied merely on the ground that it has paid under Advertisement Agency Service. As M/s Matrix has paid the service tax under the category of Advertisement Agency Service that does not mean that M/s Matrix has not paid service tax on behalf of the appellant. By mere paying the service tax liability under wrong head does not mean that service tax liability has not been discharged. The allegation of the revenue that service has been rendered by appellant but has not discharged the service tax liability is not sustainable as per section 65(7) of the Finance Act, wherein the ‘assessee’ means a person liable to pay service tax and includes his agent. In this case, appellant has appointed M/s Matrix as her agent to discharge her service tax liability on her behalf and same has been discharged by M/s Matrix.

7. In these set of facts, we hold that the appellant has discharged the service tax liability through her agent on the activity in question undertaken by her, therefore, the proceedings in this matter by way of show-cause notice and adjudication were not warranted.

8. With the above observations, we set aside the impugned order and allow the appeal with consequential relief, if any.