

No Service Tax liability on intermediary in the sale of space/ time for media agency on commission basis

The CESTAT, Ahmedabad in the matter of *M/s. Drishty Communication Private Limited v. C.C.E. & S.T.-Rajkot [Service Tax Appeal No. 135 of 2012 dated January 5, 2023]* has held that, advertising in newspapers or media agencies, where the role of the assessee was merely that of an intermediary in the sale of space/ time for media agency on commission basis, cannot lead to an inference that assessee had rendered the services as advertising agency.

Facts:

Drishty Communication Private Limited (“**the Appellant**”) is engaged in providing advertising services, wherein, they purchase space or time from newspapers or media agencies for their clients on a commission basis and the Appellants were paying Service Tax on the commission.

A Show Cause Notice (“**the SCN**”) was issued to the Appellant seeking to classify the services they provided as “Advertising Agency Service” under Section 65(105)(e) of the Finance Act, 1994 (“**the Finance Act**”).

It was alleged in the SCN that, one of the sub-agent of the Appellant, M/s. Surya Publicity (“**the Sub-agent**”), who had not obtained Service Tax Registration and was not paying Service Tax, as they were claiming benefit of the threshold exemption from paying any Service Tax under *Notification No. 06/2005-ST dated March 1, 2005* (“**the Exemption Notification**”) and consequently, the Appellant had not charged or paid any Service Tax for the services rendered to them. The SCN further alleged that the services offered by the Sub-agent to the clients were exempt under the Exemption Notification, but the services offered by the Appellant to the Sub-agent were not exempt, as the Appellant was not exempted under the Exemption Notification.

This appeal has been filed by the Appellant against the demand of Service Tax by the Revenue Department (“**the Respondent**”).

The Appellant contended that it has not provided any service to the clients rather it is only the Sub-agent who provided the services to their client and therefore, there is no liability to pay any Service Tax. Further, merely canvassing advertisements for publishing on commission basis could not be classified under “Advertising Agency Service” vide **Circular No. 96/7/2007- ST dated August 23, 2007**.

Issue:

Whether the Appellant is liable to pay Service Tax for the services rendered to the Sub-agent?

Held:

The CESTAT, Ahmedabad in **Service Tax Appeal No. 135 of 2012** held as under:

- Noted that, the Sub-agent was providing the advertising service to its client and the Sub-agent was purchasing space or time from media agencies or newspapers through the Appellant.
- Observed that, no evidence was placed to establish the services rendered by the Appellant as “Advertising Agency Services” under Section 65(105)(e) of the Finance Act, 1994.
- Relied on the judgment of CESTAT, Delhi in the matter of **H. K. Associates – 2009 (14) STR 543 (Tri.-Del.)** wherein it was held that, amounts paid as advertisement and sales promotion expenses where a portion of the sum so received was spent on advertisement, cannot lead to an inference that assessee had rendered the services as advertising agency.
- Held that, the role of the Appellant was merely that of an intermediary in the sale of space/ time for media agency on commission basis.

- Set aside the demand of Service Tax by the Respondent.

Relevant Provisions:

Section 65(105)(e) of the Finance Act (upto June 30, 2012):

“(105) "taxable service" means any service provided or to be provided, -

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(e) to any person, by an advertising agency in relation to advertisement, in any manner;”

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