IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, CHENNAI

Service Tax Appeal No. 42020 of 2016

(Arising out of Order in Appeal No. 129/2016 (STA – II) dated 26.8.2016 passed by the Commissioner of Service Tax (Appeals – II), Chennai)

Digital AD Media Worldwide Pvt. Ltd. **Appellant**
No. 73, 3rd Floor, 5th Street
Luz Avenue, Mylapore
Chennai – 600 004.

Vs.

Commissioner of GST & Central Excise **Respondent**
Chennai South Commissionerate
MHU Complex, Nandanam,
Chennai – 600 035.

APPEARANCE:

Shri J. Shankarraman, Advocate for the Appellant
Smt. Anandalakshmi Ganeshram, Authorised Representative for the Respondent

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Hon'ble Shri M. Ajit Kumar, Member (Technical)
Hon'ble Shri Ajayan T.V., Member (Judicial)

FINAL ORDER NO.40463/2026

Date of Hearing: 03.12.2025
Date of Decision: 02.04.2026

Per M. Ajit Kumar,

This appeal is filed against Order-in-Appeal No. 129/2016 (STA–II) dated 26.08.2016 (impugned order), passed by the Commissioner of Service Tax (Appeals–II), Chennai.

2. The appellant provides advertisement services. With permission from local police authorities in major districts of Tamil Nadu, the appellant installed and maintained timer devices at traffic signals at its own cost. These devices displayed countdown time for motorists, and the appellant was permitted to install a small advertising panel below the timer for commercial use. It was alleged by the Revenue

that the appellant was allowing other advertising agencies to display advertisements in the panel for consideration. The money earned from advertising using the panel, according to Revenue, constituted the consideration and should be adopted as the taxable value. During audit, the amount received as consideration for sale of advertising space without paying Service Tax was quantified as ₹9,89,354/- for the period April 2004 to March 2008. Accordingly, a Show Cause Notice was issued for recovery of tax along with interest and penalties. The adjudicating authority confirmed the demand with interest and imposed penalties under Sections 76 and 78 of the Finance Act, 1994. The appeal before the Commissioner (Appeals) was rejected, leading to the present appeal.

3. The learned Advocate Shri J. Shankarraman appeared for the appellant and Ld. Authorized Representative Smt. Anandalakshmi Ganeshram, appeared for the respondent.

3.1 Shri J. Shankarraman the Ld. Counsel for the appellant submitted as follows:

A. The Appellant merely installed timer devices at traffic signals with police permission and commercially exploited the space below by displaying company names without any designing, conceptualizing, or creative input. Such activity amounts only to sale of advertising space and does not qualify as "advertising agency" service.

B. As clarified by CBEC Circular No. 64/13/2003-ST dated 28.10.2003, mere sale of advertising space, without involvement in design or conceptualization, was not taxable prior to 01.05.2006. "Selling of space" itself became taxable

only from 01.05.2006 under Section 65(105)(zzzm); hence, any demand for the prior period is unsustainable.

C. The Appellant acted only as a sub-contractor, and consistent CBEC Circulars (1997–1998) as well as judicial precedents hold that service tax is payable by the main contractor. In the present case, the principal advertising agencies have already discharged service tax on the full value, and double taxation is impermissible. This position is squarely supported by Hi Tech Publicities v. CCE and Rex Advertisers v. CST.

D. The entire issue is revenue neutral, as any tax paid by the Appellant would be available as CENVAT credit to the principal agencies. The Appellant neither collected service tax nor suppressed facts, regularly filed ST-3 returns, and acted under a bona fide belief based on circulars and settled law; therefore, extended period and penalties are not invocable.

E. The show cause notice dated 12.10.2009 seeks to cover the period April 2004 to March 2008, which is largely time-barred under Section 73, and penalties are also not sustainable in view of Section 80 of the Finance Act, 1994.

F. The Ld. Counsel relied upon the following judgments in support of his submissions:

a. **Rex Advertisers Vs Commissioner of Service Tax, Bangalore** [2006 (2) STR 330 (Tri-Bang)]

b. **Hi-Tech Publicities Vs Commissioner of Central Excise, Madurai** [2018 (9) GSTL 119 (Tri-Chennai)

The appeal may hence be allowed.

3.2 Smt. Anandalakshmi Ganeshram, Ld. A.R. stated on behalf of revenue that:

A. The display of advertisements on panels below the timer device falls within the definition of "advertisement" under Section 65(2) of the Finance Act, 1994. Services provided by the assessee constitute taxable "Advertisement Agency Service" under Section 65(105)(3).

B. By allowing other agencies to display advertisements and receiving consideration, the assessee qualifies as an "Advertisement Agency" under Section 65(3).

C. The claim of exemption on the ground of being a sub-contractor is not tenable, as the law does not exclude sub-contractors from tax liability.

D. Failure to disclose the sale of advertisement space and consideration received amounts to suppression of facts, justifying invocation of the extended limitation period under Section 73(1).

E. She relied upon the following judgments in support of her averments:

a. **Image Advertising Vs Commissioner of Service Tax, Delhi** [(2024) 17 Centax 283 (Tri-Del)]
b. **Image Advertising Vs Commissioner of Service Tax, Delhi** [(2024) 14 Centax 191 (Del)]
c. **Commissioner Vs Melange Developers Pvt Ltd.** [2019 (6) TMI 518 CESTAT NEW DELHI – LB]

The Ld. A.R. prayed that the appeal may be rejected.

4. We have heard both parties and examined the appeals and the connected judgment. The issue is whether displaying company names beneath traffic signal timer devices, without any design, conceptualization, or creative input, by the appellant, constitutes the rendering of "Advertisement Agency Service".

5. It would be helpful to extract the relevant provisions of the Finance Act 1994, concerning the dispute:

Section 65(3) states:

> "**advertising agency**" means any person engaged in providing any service connected with the making, preparation, display or exhibition of advertisement and includes an advertising consultant"

6. The Board, vide **F. No. 345/4/97-TRU dated 16.08.1999**, clarified that no service tax is leviable on advertisements booked in yellow pages. The clarification states that service tax under "advertisement agency" applies only where activities such as designing, visualising, or conceptualising advertisements are undertaken; mere sale of space does not attract tax. This reasoning squarely applies to the present case. The clarification is as under:

> "I am directed to state that doubts have been raised as to whether persons engaged in the activity of compilation, printing and publishing of telephone directories, yellow pages and business directories are covered under the definition of 'advertising agency' and accordingly liable to pay service tax.
>
> 2. The matter has been examined. Section 65 of the Finance Act, 1994 defines an advertising agency as a Commercial concern engaged in providing any service connected with the making preparation, display or exhibition of advertising and includes advertising consultant. Vide letter No. 341/43/96-TRU, dated 1st October, 1996, it was clarified that in relation to an advertising agency, the service tax is to be computed on the gross amount charged by the advertising agency from the client or 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 making or preparation of advertisement or gets 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 print media or the electronic media will not be includible in the value of

taxable service for the purpose of levy of service tax. The commission received by the advertising agency would, however, be includible in the value of taxable service**. In other words, service is attracted on advertising agencies which are providing service to advertisers by conceptualising, designing or preparing advertisements.** Printing on electronic media are excluded from the levy of service tax as they do not provide any service to the advertisers, but are merely selling space or time for the exhibition of advertisements.

3. In the case of persons who are printing and publishing telephone directories, yellow pages or business directories, their activity is essentially of printing a readymade advertisements from the advertisers and publishing the same in the directory. Their activities are similar to those carried out by newspapers or periodicals. As such, this activity shall not attract service tax. **However, if these persons also undertake any activity relating to making or preparation of an advertisement, such as designing, visualising, conceptualising etc., then they will be liable to pay service tax on the charges made thereon."**

5. It is apparent from this letter that the activity of printing and publishing yellow pages does not attract service tax. However, Service Tax is attracted on advertising agencies which are providing services to advertisers by conceptualising, designing or preparing advertisement. This circular was not considered by both the lower authorities. Further, there is no finding given on the question of applicability of time limit in the impugned Order. We, therefore, set aside the impugned Order and remand the matter to the Jurisdictional Assistant/Deputy Commissioner with the direction to examine the chargeability of the activity in question to Service Tax in terms of Ministry's letter F. No. 345/4/97-TRU, dated 16-8-1999 and also to consider question of Time limit and unjust enrichment after affording a reasonable opportunity of hearing to the Appellants."

(Emphasis added)

7. A coordinate Bench of this Tribunal examined the service rendered by the appellant to their clients for using the space provided in the

buses for fixing advertisement boards in **M/s. Tamil Nadu State Transport Corporation Appellant Vs Commissioner of GST & Central Excise** [Final Order No. 40796/2023, dated 15/09/2023]. The Order held:

> "5.2 It is seen from the above conditions that while the appellant lays down the guideline to be followed, they do not involve themselves with conceptualizing, designing or preparing of the actual advertisements. This activity rests with the advertiser himself. The appellant only facilitates the display of advertising boards on payment of charges for the space allotted. This being so the question of the appellant being involved in the making, preparation, display or exhibition of advertisements does not arise. Mere selling of space for the exhibition of advertisements will not be covered by the definition of 'Advertising Agency'. The onus of proof regarding fulfilment of condition subject to which an exemption may be admissible lies on the assessee or upon a party claiming benefit under a notification, but in the case of subjecting an activity to levy under a taxing statute, the onus is on Revenue. The impugned order has failed to substantiate its case hence the appellant cannot be said to be carrying out the activities of an 'advertising agency'.

5.4 A similar matter was also examined by the Tribunal in **Commissioner Vs Incoda** [2004 (174) E.L.T. 65 (Tribunal)]. It was held:

> "4. The question before us is as to whether the **act of displaying the advertisement in the Metro Railway Coaches is tantamount an act of Advertising Agency and is liable to pay Service Tax.**
>
> 5. The similar matter came up for consideration before Delhi Tribunal in the case of **Commissioner of Central Excise, Ludhiana v. Azad Publications** reported in 2004 (167) E.L.T. 59 (Tri. - Del.) wherein Hon'ble Justice K.K. Usha, President, CESTAT, held as under :
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> > "Service Tax - Advertising Agency - Respondents permitting display of advertisement on its site and raising bills for realizing rental charges - Such activity not bring the respondents under the definition of advertising agency - Section 65(2) of Finance Act, 1994."

> In the present case also, the respondent has hired space in Metro Railway Coaches and in turn provides space to its client for advertisement. The facts of the present case are similar to that of **Commissioner of Central Excise, Ludhiana Vs Azad Publications** (supra). In view of the above, I do not find any merits in the present appeal and appeal deserves to be dismissed.
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> 6. Consequently, I dismiss the appeal filed by the Revenue."

8. It emerges from the foregoing discussion that, under Section 65(3) of the Finance Act, 1994, service tax applies only where services of making, preparation, display or exhibition of advertisement are rendered. As per CBEC's clarification dated 16.08.1999, these should involve activities such as designing, visualising, or conceptualising advertisements. Mere sale of space does not attract tax as 'Advertising Agency Service'. Accordingly, display of a company name simpliciter, as in this case, does not amount to advertising agency service, and the impugned order is liable to be set aside.

9. The judgments cited by the Ld. A.R. and referred to above, concerning a sub-contractor's Service Tax liability where the main contractor has paid the tax, favour the revenue. Their applicability to demands being made under the extended-period was examined by this Bench in **Sree Nandhees Technologies Pvt. Ltd. v. Commissioner of GST & Central Excise** [Final Order No. 41408/2025 dated 02.12.2025]. Relevant portion is extracted below:

> "6. Hence while the issue on merits, that the sub-contractor would be liable to pay Service Tax even if the main contractor has discharged Service Tax liability, has been settled by the Order of the Larger Bench of this Tribunal in MELANGE DEVELOPERS [**Commissioner, New Delhi Vs. Melange Developers Pvt. Ltd.** – 2020 (33) GSTL 116 (Tri. LB)]. We do not hence examine the other judgments cited by revenue. **It is**

also clear that prior to the issue of the Master Circular in 2007, Boards Circulars held that Service Tax was not required to be paid by certain categories of the sub-contractor, provided the principal had paid the Service Tax. Hence there was some ambiguity in the understanding of law prior to 23-8-2007. Further even in the case of Sunil Hi-Tech Engineers (supra), cited by revenue there was a difference of opinion among the Members of the Division Bench and the issue was finally decided by a majority opinion after the matter was referred to a third Member, highlighting that there were divergent views involving interpretation of law. Moreover, there is nothing in the SCN that shows that there was any intent on the part the appellant to evade duty. Not indicating the income in the ST3 return as a result of the prevailing practice and the appellants understanding of law does not in itself show an intention to evade payment of duty. As stated by a three Judge Bench of the Hon'ble Supreme Court in Cosmic Dye Chemical Vs Collector of Central Excise ((1995) 6 SCC 117], in the context of Section 11A of the Central Excise Act, 1944, which is in identical to Section 73 of the Finance Act, 1994 that: "Now so far as fraud and collusion are concerned, it is evident that the requisite intent, Le., intent to evade duty is built into these very words. So far as misstatement or suppression of facts are concerned, they are clearly qualified by the word "wilful" preceding the words "misstatement or suppression of facts which means with intent to evade duty. The next set of words "contravention of any of the provisions of this Act or rules are again qualified by the immediately following words "with intent to evade payment of duty. It is, therefore, not correct to say that there can be a suppression or misstatement of fact, which is not wilful and yet constitute a permissible ground for the purpose of the proviso to Section 11-A. Misstatement or suppression of fact must be wilful." (emphasis added)

In the light of the ambiguity in law prior to 23.08.2007 as discussed the question of willful suppression etc., would not arise. The period involved in this appeal is for the from April 2004 to March 2008, a major portion of which is prior to the issue of Master Circular dated 23.08.2007. The SCN dated 12.10.2009 has been issued including a duration of time beyond the normal period and is hence partly time barred. In any case the issue on merits has been decided in favour of the appellant, above.

10. The judgments cited by the appellant are in line with our decision above and are not being discussed separately.

11. We accordingly set aside the impugned order and allow the appeals. The appellant is eligible for consequential relief, as per law. The appeal is disposed of accordingly.

(Order pronounced in open court on 02.04.2026)

(**AJAYAN T.V.**)
Member (Judicial)

(**M. AJIT KUMAR**)
Member (Technical)

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