

**CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH AT HYDERABAD**

Division Bench – Court No. – I

Service Tax Appeal No. 30179 of 2019

(Arising out of Order-in-Original No. GUN-EXCUS-000-COM-05-18-19-S.Tax dt.18.10.2018
passed by Commissioner of Central Tax, Guntur)

**Commissioner of Central Tax
Guntur - GST**

PB No.331, CR Building, Kannavari Thota,
Guntur, Andhra Pradesh – 522 004

.....Appellant

VERSUS

M/s Prakash Arts Pvt Ltd

H.No.27-20-30, Museum Road, Governorpet,
Vijayawada, Andhra Pradesh – 522 002

.....Respondent

Appearance

Shri V.R. Pavan Kumar, AR for the Appellant.

Shri Lalit Mohan Chandna, Advocate for the Respondent.

**Coram: HON'BLE MR. A.K. JYOTISHI, MEMBER (TECHNICAL)
HON'BLE MR. ANGAD PRASAD, MEMBER (JUDICIAL)**

FINAL ORDER No. A/30305/2026

Date of Hearing: 21.04.2026

Date of Decision: 03.06.2026

[Order per: A.K. JYOTISHI]

The Department is in appeal against OIO dt.18.10.2018, whereby, the Adjudicating Authority has dropped the proceedings initiated vide SCN dt.11.04.2018 against M/s Prakash Arts Pvt Ltd (hereinafter referred to as the Respondent) and one Shri C.D.V. Subba Rao, Director and CEO of respondent company (Impugned Order).

2. The brief facts of the case are that the respondents are engaged in providing certain activities of advertisement through hoardings, billboards, signboards, etc., according to the specifications provided by their clients. They are also having Service Tax registration for providing taxable services under the category of 'Outdoor Advertisement Services'. The department, based on scrutiny of certain documents like agreement dt.06.02.2013

between the respondent and South Western Railways and award of contract dt.10.10.2012 by South Central Railways, as also, statements of Shri CDV Subba Rao, Director and CEO, and one Shri H.V. Surenderanath, Chief Operating Officer, formed a view that the respondents were providing Advertisement Services to Railways awarded through tender process; and that they were getting contracts issued by Railways for providing display of glow sign boards and other types of illuminated display boards for advertisements at Railway stations; and that use of Railway premises/space under license obtained is apparently a taxable service viz., 'Business Support Service' (BSS). The summary of the investigation conducted by the department for demanding service tax is cited below for better appreciation of the grounds, based on which the department had issued SCN.

8. Scrutiny of documents viz., copies of license agreements with Railways, Awards of Contract, Annual Balance Sheets, Statement showing break-up of balance sheet figures, Copies of agreements entered into with other public/private entities etc., resumed under summons from M/s PAPL during the course of investigation and from the depositions made by Shri H.V. Surenderanath, Chief Operating Officer and authorized representative of M/s PAPL, it appears that M/s PAPL were providing advertising services to Railways through tender process; M/s PAPL was getting licenses/contracts issued by Railways for providing advertisement services such as display of glow sign boards and other types of illuminated display boards for advertisements at Railway stations; that use of Railway premises/space under license obtained is apparently a taxable service viz., business support service i.e., assigning demarcated space for advertisement at specified premises of Railways; As per the terms of tender, M/s PAPL is required to pay license fee for the advertisement rights granted by Railways, which appears taxable income to Railways; the Railways, being a government entity, the recipient of service apparently has to pay service tax on 'license fees' under 'reverse charge mechanism' as per S.No.6 of Notification No. 30/2012-ST dt.20.06.2012, which came into effect from 01.07.2012; It appears that M/s PAPL have not discharged service tax liability under 'reverse charge mechanism' on the services received by them during the period July, 2012 to September, 2016 with intent to evade payment of service tax. However, it appears that the service tax paid by M/s PAPL after the initiation of investigation for the period from April, 2016 to September, 2016, which appears to be appropriated against the service tax payable for the above period."

3. Before the Adjudicating Authority, the grounds taken by the respondent was that they had filed tenders for taking on rent certain space/area in the premises of South Western & South Central Railways for putting up hoardings, billboards, etc., and on successful acceptance of tenders, the respondents took specified area within the Railway properties under 'license agreement' for specified period and specified fee which was referred to as license fee. They also explained that the activity of respondent

is twofold, inasmuch the first part comprises of procuring the designated location/area within the premises from the Railways on 'license fee' by following the tender procedure, where the service of renting part of its immovable property for specified period and specified license fee is provided by the Railways to the respondent. The second part of the activity consists of providing advertisement services to various clients of the respondents, for which they are discharging the appropriate service tax on the said activity. They mainly contested the invocation of the grounds by the department that Railways were providing 'support service' and therefore, in such case, even though service is being provided by the Government, the service tax would be required to be paid by the respondent (recipient) on Reverse Charge Mechanism (RCM) basis. He has also submitted that the activity being provided by the Railways would more appropriately fall under the category of 'Renting of Immovable Property Service' (RIPS) and not under BSS.

4. The adjudicating authority examined the basic ground in the SCN i.e., whether the activity involved in the present transaction can be termed as support service or otherwise. He took into account the provisions contained in section 66D(a)(iv) of the Finance Act, 1994, governing negative list, which covers certain activities by the Government or local authority, where no service tax can be charged. The same entry, however, excludes some of the activities of the Government, where the service tax would be chargeable. Support service is one of those services, which is excluded from the purview of negative list. In other words, he held that if the services can be considered as support service, then service tax is payable. After analyzing the activities and definition of support service in terms of section 65B(49), he has, inter alia, held that the ground taken by the department that the said activity has to be considered as support service, was not correct. The relevant para of his findings are cited below.

"13.2. From the notice, it is seen that the demand was made considering the activity under question was covered under section 66D(a)(iv) of the Act. There is no dispute that the service provider is Railways for the subject activity and service receiver is the assessee. At this stage, I would like to examine the activity between the Railways and assessee. From the contracts/agreements it can be seen that the Railways have called for tenders to let out certain place for 'installation of glow sign hoardings', 'display of commercial advertisement hoarding', 'erection of uni-pole', etc. Section 65B(49) reads as:

"(49) "Support services" means infrastructural, operational, administrative, logistic, marketing or any other support of any

kind comprising functions that entities carry out in ordinary course of operations themselves but may obtain as services by outsourcing from others for any reason whatsoever and shall include advertisement and promotion, construction of works contract, renting of immovable property, security, testing and analysis.

13.3 The agreements/contracts entered between the Railways and the assessee did not indicate/cover any activity mentioned in the above definition to 'support services'. The agreements clearly indicate that they have called for tenders for permitting to display advertisement at demarked sites; that the assessee has to arrange their own material/electricity to erect display hoardings. For instance, in the agreement made on 06.02.2013 between the President of India through the Sr. Divisional Commercial Manager, South Western Railway, Bangalore on Sr. Divisional Commercial Manager, South Western Railway on one part and the assessee on other part, it was mutually agreed denotes that the Railways rented out their premises to the assessee for advertisement purpose only vide S.No.13 of the agreement. I did not see any service provided by the Railways which constitute 'support services' as defined in Section 65D(a)(iv) of the Act. Under the agreements, the Railways are not under any obligation to provide any support services nor were the activity under the agreements outsourced by the assessee to Railways.

13.4 Hence, I conclude that allegation that the impugned activity of the assessee is to be classified/treated as 'support service' as alleged in Para 8 of the show cause notice, is not tenable. That is, neither the assessee has outsourced the activity of procurement of space on lease or license to Railways. Nor can Railways be said to be providing supporting service to the assessee. The transaction is on principal to principal basis whereby Railways has leased/licensed out its place/premises and the assessee has taken such lease/license for his business activity. Consequently, the demand of service tax raised on the basis of this allegation is not sustainable."

5. Apart from rebutting the basic ground of the SCN that the activities would fall under support service, he also examined the counter argument made by the respondent that the said activity would be more appropriately fall under the category of RIPS. He noticed that w.e.f. 01.07.2012, in terms of section 66E, inter alia, RIPS has to be treated as a declared service. Thereafter, he examined the scope of the said service and also relied on certain judgments to conclude that the transaction between the respondent and the Railways is squarely falling within the definition of RIPS, which is a declared service under section 66E. He also noticed that in the case of said service, as apparent from entry at S.No.6 of Notification No. 30/2012-ST dt.20.06.2012, the service tax is payable on forward charge basis and not under RCM, as clearly RIPS has been excluded from the purview of RCM. He also examined the scope for invoking extended period and, inter alia, held that the same will not sustain and even penalty imposed on the respondent and Shri C.D.V. Subba Rao, Director and CEO, will also not sustain.

6. The department has taken various grounds in support that the adjudicating authority has not properly appreciated the facts and has arrived at wrong conclusion. The main grounds of appeal of the department can be summarized, as under.

- a) Service received by the respondent is a support service and not RIPS.
- b) Terms and conditions of the agreement dt.06.02.2013 provides for payment of service tax by the respondent.
- c) Non-applicability of the case laws cited in support of the contention that service falls under RIPS.
- d) Invocation of extended period was correct in the facts of the case.
- e) There is absence of findings with regard to service tax paid by the respondent during the investigation and liable for appropriation.

7. Learned AR for the department, apart from reiterating the grounds of appeal taken by the department, has highlighted the terms and conditions of the agreement dt.06.02.2013. He has specifically quoted para 6(f) & 7(e) of the agreement. He has also submitted that the view of the adjudicating authority that Railways were not providing support service to the respondents is not backed by any reasoning or legal provisions. Moreover, he has also highlighted that once certain service tax has been paid by the respondent and was proposed for appropriation, no findings have been given as regards appropriation. On the issue of limitation also, he has relied on the grounds taken in the SCN. As regards alternative submission taken by the respondent that the service received by them from Railways would amount to sale of space up to 01.10.2014, he has submitted that this ground was not taken earlier and therefore, it cannot be now taken and the same needs to be re-examined by the adjudicating authority.

8. Learned Advocate for the respondent has submitted that the adjudicating authority has passed a well-reasoned order based on facts and legal provisions and the departmental appeal against the same is not sustainable. His first ground is that as alleged in the SCN and as apparent from the summary of investigation, the department suggested that Railways were providing advertisement services to respondent under the category of support services. He has also tried to take an additional ground that the said activity would fall within the category of 'Sale of space or time for advertisement', which was not taxable being in the negative list from

01.07.2012 till 01.10.2014. Even for the period beyond 01.10.2014, though the service of 'sale of space or time for advertisement' was taken out of the negative list, the liability of service tax was under forward charge basis and not on RCM basis. Insofar as classification adopted by the department that the Railways were providing support services, his main argument is that Railways did not provide any advertisement services under the category of support service and what, in fact, they had provided was sale of space or time for advertisement service, which was in the negative list up to 01.10.2014 and later, under forward charge basis till 01.04.2016. Therefore, the said activities were never covered under the category of support services under Notification No.30/2012. He has also tried to explain that respondent had paid license fee to the Railways for grant of license to use the premises/space belonging to Railways. 'License' means granting of right to do, or continue to do, in or upon the immovable property, which does not amount to interest in the property. Therefore, in this case, the payment of license fee by the respondent was merely to get right from Railways to use their property for display of advertisement by the respondent. He has relied on the judgment of the Coordinate Bench in the case of Shah Publicity Vs CCE [2023 (11) Centax 6 (Tri-Ahmd)], which was affirmed by the Hon'ble Supreme Court as reported in [2024 (80) GSTL 113 (SC)], wherein, the scope of advertisement services was examined. In view of the said judgment, the scope of advertisement services include making of advertisement including basic planning of advertisement, mode of advertisement, display of advertisement, whereas, in the facts of the case, it was obvious that these services were not provided by Railways to the respondent and therefore, tax under RCM was not attracted.

9. Insofar the view taken by the adjudicating authority that the said activity would fall under RIPS, which is now being disputed by the department, learned Advocate's main submission is that though their activities would appropriately merit classification under 'sale of space or time for advertisement services' being specific entry, the classification done under RIPS is also correct for the reason that the Railways had allotted specified area within their premises and had permitted use of said property for a consideration in the form of 'license fee'. He has highlighted explanation 2 to the definition under section 65(90a) covering 'renting of immovable property', which provides that RIPS will include allowing or

permitting the use of space in an immovable property, irrespective of the transfer of possession or control of the said immovable property. He has also submitted that apart from the said appeal being not maintainable on merit itself, the view taken by the adjudicating authority regarding non-invokability of extended period is also correct, as it is now well settled law that it is the burden of the department to prove suppression. He has relied on various case laws including Larsen & Toubro Ltd [2007 (211) ELT 513 (SC)], Tamil Nadu Housing Board [1994 (74) ELT 9 (SC)] and Uniworth Textiles Ltd [2013 (288) ELT 161 (SC)].

10. Heard both sides and perused the records.

11. The issue, which is to be decided, is whether in the given factual matrix, the respondents were receiving support services from the Railways or otherwise. This is crucial to the issue, inasmuch as if they were receiving support services, then in such case, the service tax is payable by the respondent as service recipient under RCM. Secondly, whether the view on appropriate classification by adjudicating authority is correct or otherwise.

12. We have perused the order of the adjudicating authority and we find that he has held that the activities would not fall within the scope of support service. The definition of support service is, as under.

Section 65B(49).

"Support services" means infrastructural, operational, administrative, logistic, marketing or any other support of any kind comprising functions that entities carry out in ordinary course of operations themselves but may obtain as services by outsourcing from others for any reason whatsoever and shall include advertisement and promotion, construction of works contract, renting of immovable property, security, testing and analysis.

A plain reading of the above definition would indicate that when service provider provides support service, which will include advertisement and promotion activity also, he is required to pay service tax. It is also to be noted that said service is ordinarily carried out by the said service provider but may obtain said service by outsourcing from others for any reason whatsoever. In plain words, it would mean, in the given factual matrix, that Railways should have been ordinarily be engaged in the activity of advertisement and promotion, however, they had outsourced the said activity to the respondent. This does not appear to be correct as there is no evidence to suggest that Railways were otherwise engaged in carrying out

any advertisement or promotion activities. It is also a fact that the agreement and contracts entered does not say categorically that the Railways would provide support service to the respondent. The agreement is essentially for letting out of certain earmarked/specified space for installation of glow signboards, display of commercial advertisement, hoardings, etc., and it was mutually agreed between the Railways and respondents that the space has been rented out to them for advertisement purpose only subject to certain terms and conditions/restrictions. We also note that from the definition of support service under section 65B(49), it is evident that support service refers to 'outsource' infrastructural, operational, administrative or logistic functions including security, advertisement and renting of immovable property services. Appellant has submitted that the grounds taken by the department that services provided by Railways is granting of advertisement rights to the respondent and as a result, promoting the business of the respondent, who is engaged in advertisement business as advertisement and promotion is specifically included in support services and therefore, the services rendered by the Railways would fall under support service, is not correct. Learned Advocate has clarified that advertisement services require certain ingredients and it is obvious that the Railways did not provide any advertisement services to the respondent. The judgment in the case of Shah Publicity Vs CCE (supra) also supports the view that before it is covered under advertisement service, it must be brought out that the person providing the said service is making advertisement including basic planning of advertisement, mode of advertisement, display of advertisement, etc. None of these elements are present qua Railways.

13. We also note that it is an admitted position that the Railways have been considered as service provider in the present appeal. The reliance placed under section 66A for payment of service tax under RCM is only applicable to the extent that in respect of specified services, instead of service provider, the service recipient will be required to discharge the service tax in accordance with notification issued in this regard. It does not mean that for specified service, the service recipient will be required to provide the service and treated as service provider, rather, it is only for the limited purpose of payment of service tax that he is deemed to be the service provider. In other words, there is no dispute that in the current

factual matrix, what service has been provided by the Railways will be important and not what service has been provided by the respondent to the Railways. Therefore, if the services provided by the Railways are not covered within the ambit of support service, then obviously, if there is any other service provided by the Railways, the service tax will have to be paid by the Railways on forward charge basis if not otherwise covered under RCM.

14. We find that the adjudicating authority examined the scope of support services in the given factual matrix and has rightly held that the Railways were not providing support services to the respondent. From the submissions of the respondent also, it is obvious that the activities claimed to have been performed in relation to the advertisement and promotion by the Railways is also not tenable as they have not performed those functions. Thus, the findings that the Railways, as a provider of service, were not providing support services and therefore, the service tax was required to be paid on forward charge basis, if any taxable services were provided and not on RCM basis, as alleged in the SCN. We also find that the Revenue has argued certain terms and conditions of the agreement, however, we find that those terms and conditions are not supporting the contention that the Railways were providing any support services of the nature of advertisement and sales promotion. We, therefore, find that there is no infirmity in the order of the adjudicating authority insofar as it relates to holding that the said activity cannot be covered within the scope of support service.

15. Further, the basic ground on which SCN has been issued, has been decided in favour of the respondent by holding that in the facts of the case, RCM is not invocable as the activity could not come within the ambit of support service, we find that adjudicating authority has proceeded further to examine the scope of claim made by the respondent that the said service would fall more appropriately under the category of RIPS. We have perused the letter dt.10.10.2012 awarding contract for display of commercial hoarding. If all the terms and conditions are holistically evaluated, it is apparent that Railways have allotted specified area/ location for which they are not only charging yearly license fee but also taking security deposit. Thus, Railways have provided specified area to respondent, to the exclusion of others, for the purpose of putting up hoardings, sign boards, etc. Certain

standard terms and conditions applicable while letting out a space by a person have been incorporated and those terms and conditions, in itself, cannot make the said agreement as an agreement for granting advertising rights. The license fee is also used for rent for letting out space when a lease and license agreement is signed between lesser and lessee. We also find that the adjudicating authority has taken into account the explanation-2 to the definition, which includes allowing or permitting use of space in immovable property irrespective of transfer of possession or control of said immovable property. As is apparent from the agreement that Railways were providing certain specified demarcated space or location where the respondents were putting up their advertisement, billboards, etc. They were paying license fee for the purpose of taking said infrastructure or space in immovable property for putting up that hoardings. The term 'license fee', on its own, cannot be construed to mean that it is for transfer of right to advertise within Railway premises. The license can be even for the rent for taking certain specified space for specified period for any particular use. In this case, respondents have taken space for putting up of hoardings, billboards, etc., and for renting out that space, they are paying license fee. Therefore, in this case also, we find the findings of the adjudicating authority that proper classification of the said activity of the Railways would be under RIPS, wherein, RCM is not applicable, does not suffer from any infirmity.

16. Insofar as alternative plea taken by the respondent that the activities being carried out by the Railways would fall appropriately under the category of 'sale of space or time for advertisement service' and therefore, will not be leviable to service tax up to 30.09.2014, being in the negative list and thereafter chargeable to service tax but on forward charge basis w.e.f. 01.10.2014, we find that though there is merit in the said argument of the respondent, however, we also note that this aspect was never taken up before adjudicating authority or dealt with at the stage of adjudication and therefore, this ground of alternative classification cannot be taken up at this stage. Moreover, as already observed, supra, the classification considered by the adjudicating authority under the category of RIPS was an additional finding by the adjudicating authority after having held that the basic ground for demand against respondent in the SCN itself was not tenable. Thus, the issue of classification cannot be now reopened as it has already been

decided by the adjudicating authority, which we find is correct classification in the given factual matrix.

17. The department has also contended that the adjudicating authority has not made any observation regarding payment of Rs.60,64,789/- paid by the respondent for the period April, 2016 to September, 2016, which was also duly reflected in ST3 returns nor has appropriated the same. We find that the adjudicating authority has clearly held that demand is not sustainable on merit both on the grounds that impugned activity of the respondent is not classifiable or treated as 'support service', as alleged in the SCN and also because the said transaction between the Railways and the respondent clearly fell within the definition of RIPS. Therefore, having decided the issue on merit that no demand of service tax can be made from the respondent, there was obviously no need to appropriate any amount paid towards the said demand irrespective of the period as long as the entire period was the subject matter of the SCN as well as impugned order.

18. The department has also contended that findings of the adjudicating authority as regards invocation of extended period being not proper and legal. They have mainly contested that the department came to know about the while issue only through detailed examination of agreements between the Railways and the respondent and after recording statement of Shri C.D.V. Subba Rao, Director and CEO of respondent company. It was also pointed out that as the respondents were liable to pay service tax on license fee under RCM, they were required to declare various details concerning license fee paid by them to Railways and tax liability on such license fee. However, they failed to disclose the same. We find that the adjudicating authority has examined this aspect in detail at Para 16 of the impugned order for coming to the conclusion that invocation of extended period was not tenable. Para 16 is cited below.

"16. The Show Cause Notice was issued in terms of Proviso to Sec.73(1) of Finance Act, 1994 by invoking extended period under clause suppression of facts with an intention to evade payment of Service Tax. The assessee has obtained centralized Service Tax Registration on 14.03.2011 and since then discharging their liability of their Service Tax on advertisement service. In the absence of any statutory requirement to declare the services received which were not under reverse charge mechanism in the ST3 Returns, non-declaration of the license fees paid by the assessee will not constitute suppression of material facts and as such invocation of extended period will not stand the scrutiny of the law. Hence the invocation of extended period to demand Service Tax in terms

of proviso to Section 73(1) of Finance Act, 1994 is also not tenable. Consequently the question of imposing any penalty on the assessee under Sections 76, 77 and 78 of the Finance Act, 1994 does not arise."

19. We find that the limited grounds adduced in the SCN for invocation of extended period were examined and in the given factual matrix, it was held by the adjudicating authority that the same was not tenable. We also find that once having decided that there is no merit in demand, as such, and the entire demand was held as not tenable, there was no need to examine it from the limitation point of view. However, be the case as it may, this aspect has also been examined and on this count also, he has given his findings. Therefore, we do not find any infirmity in these findings also. As regards non-applicability of case laws, we find that adjudicating authority has based his findings primarily on the ground of factual matrix and therefore, even if some case laws relied upon may not have any bearing, the conclusion drawn cannot be faulted.

20. To sum up,

- a) We are in agreement with the findings of the adjudicating authority that in the given factual matrix, service provider i.e., Railways is not providing any support services and therefore, the basic ground for raising demand under RCM on the respondent is not tenable.
- b) The alternative argument that the said activity would more appropriately fall under RIPS, as upheld by the adjudicating authority, is correct in the given factual matrix.
- c) The findings regarding non invocability of extended period and non-imposition of penalty are also correct.

21. Therefore, we do not find any infirmity in the order of the adjudicating authority dropping the proceedings initiated in terms of SCN dt.11.04.2018.

22. Appeal dismissed.

(Pronounced in the Open Court on 03.06.2026)

(A.K. JYOTISHI)
MEMBER (TECHNICAL)

(ANGAD PRASAD)
MEMBER (JUDICIAL)