

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI
PRINCIPAL BENCH, COURT NO. 3**

SERVICE TAX APPEAL NO. 51901 OF 2019

[Arising out of Order in Original No. 55/KAM/PC/CGST/DSC/2018-19 dated 01.03.2019 passed by the Pr. Commissioner of Central Goods & Service TAX, Delhi]

**PRINCIPAL COMMISSIONER OF CGST &
CENTRAL EXCISE-DELHI-IV**

.....APPELLANT

Delhi South Commissionerate, New Delhi

Vs.

**M/S NEXUS ALLIANCE ADVERTISING &
MARKETING PVT LTD**

.....RESPONDENT

D-8/1, Okhla Industrial Area, Phase II,
New Delhi-110020

Appearance:

Present for the Appellant : Shri Harsh Vardhan, Authorised Representative

Present for the Respondent: Shri Vanadana Bhandari, Advocate

CORAM:

HON'BLE MS. BINU TAMTA, MEMBER (JUDICIAL)

HON'BLE MR. P. V. SUBBA RAO, MEMBER (TECHNICAL)

FINAL ORDER NO. 50500 /2025

Date of Hearing : 17/02/2025

Date of Decision : 17/04/2025

P.V. SUBBA RAO:

1. Revenue has filed this appeal to assail the Order-in-Original dated 01.03.2019¹ passed by the Commissioner (Adj) of CGST, Delhi South Commissionerate, whereby he dropped the proceedings initiated against M/s Nexus Alliance Advertising & Marketing Pvt Ltd.² and its director Shri Jogesh Bhutani by show cause notice dated 17.10.2018³. The respondent is registered with the service tax

1 Impugned order
2 Respondent
3 SCN

department for providing advertising agency service and selling of space and time slots for advertisement services.

2. The Director General of GST Intelligence⁴ investigated the respondent and found that during the relevant period it had booked advertisements for different advertisers to be printed in media or broadcast on radio, television etc. For this purpose, the respondent entered into agreements with various advertisers. As per these agreements, the respondent does the media planning and media buying on behalf of its clients(advertisers) in print, radio and online. For rendering these services, the respondent was paid on agency commission on which it paid service tax. However, buying or selling of space in print media was not subject to service tax as it was in the negative list during the relevant period. There is no dispute on these issues.

3. However, if the respondent buys space or time from various media for its clients and meets certain targets, the respondent receives incentives or volume discounts from the media on them. DGGI formed an opinion that these incentives would mean that the respondent performed business promotion of the media owners which was a declared service under section 66E(e) of the Finance Act, 1994⁵. Therefore, a show cause notice dated 17.10.2018 was issued proposing recovery of service tax of Rs. 3,95,69,248/- from the respondent covering the period 01.04.2013 to 30.06.2017 invoking extended period of limitation under proviso to Section 73(1) of the Finance Act. Interest was demanded under Section 75 of the Finance

4 DGGI
5 The Finance Act

Act and penalties were proposed under Sections 76, 77 and 78 of the Finance Act.

4. After considering the submissions made in reply to the show cause notice and during personal hearing, the Commissioner dropped the proceedings.

5. Aggrieved, Revenue filed this appeal on the following grounds.

- (i) The Commissioner failed to appreciate that all the schemes offered by print media are accepted and signed by both parties;
- (ii) The media agency agreement gave authority to the respondent to carry out specific activities;
- (iii) Clause B of the Agreement Dated 31.07.2015 specified the scope of work and services to be provided by the media agency, which includes formulation of media strategies based on marketing objectives and plans agreed upon with the client;
- (iv) By virtue of the authority under the contracts, the respondent made strategies and media plans for advertisers;
- (v) The incentive provided by the media houses is for accepting an obligation to do an act and, therefore, the same is a declared service under Section 66E(e) of the Finance Act.
- (vi) Therefore, the demand of service tax raised in the SCN should have been confirmed and the Commissioner has erred in dropping it.

(vii) The demand of service tax along with interest and penalties on the respondent and its director may be confirmed by setting aside the impugned order.

6. We have heard learned authorized representative appearing for department and the learned counsel for the respondent and perused the records.

7. The business arrangement of the respondent is simple. It acts as an agency for its clients, the advertisers. It helps them make media, print or podcast advertisements on various channels. For these services, it receives a commission on which it pays service tax and there is no dispute. The print and medial channels through which it places the advertisements provide an incentive to the respondent if it attains certain targets in terms of turnover during the year. The case of the Revenue is that the respondent had agreed to do an act for the media channels and print media and the incentive given by them to the respondent is the consideration for this obligation. Therefore, according to the Revenue the respondent is rendering a declared service in terms of section 66 E(e) which reads as follows:

"66E. The following shall constitute declared services, namely:-

(e)agreeing to the obligation to refrain from an act, or to tolerate an act or situation, or to do an act."

8. We find from the facts of this case that the respondent has no agreement with the media houses to meet any target nor is there any obligation on the media house to provide incentives/ discount. In fact, the respondent's clients are the advertisers. They decide and approve the media plans suggested by the respondent. Therefore,

the respondent has no discretion to get the advertisements published in a particular newspaper or broadcast through channels of its choice. The Respondent, therefore, cannot have an obligation to the media houses. All that is paid by the media houses is, if the respondent achieves particular target while carrying out its business for its clients, the media house gives some incentives.

9. Section 66E(e) covers as declared services only such cases where there is an obligation under an agreement on the assessee to carry out an act or to tolerate an act. Such is not the case here.

10. In view of the above, the impugned order passed by the Commissioner is correct and calls for no interference. The impugned order is upheld and the appeal filed by the Revenue is dismissed.

[Order pronounced on **17.04.2025**]

(BINU TAMTA)
MEMBER (JUDICIAL)

(P. V. SUBBA RAO)
MEMBER (TECHNICAL)