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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Decision: 5th December, 2025

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\+ **SERTA 36/2025 and CM APPLs. 76873/2025 & 76874/2025**

PRINCIPAL COMMISSIONER OF CGST AND CENTRAL EXCISE DELHI IV CGST DELHI SOUTH COMMISSIONERATE

.....Appellant

Through: Mr. Aditya Singla, SSC, CBIC with Ms. Arya Suresh Nair, Adv.

versus

M/S NEXUS ALLIANCE ADVERTISING AND MARKETING PVT LTD

.....Respondent

Through: None.

CORAM:
JUSTICE PRATHIBA M. SINGH
JUSTICE SHAIL JAIN

JUDGMENT

Prathiba M. Singh, J.

1. This hearing has been done through hybrid mode.

2. The present appeal has been filed by the Appellant under Section 35G of the Central Excise Act, 1944 *inter alia* challenging the impugned order dated 17st April, 2025 passed by the Customs, Excise and Service Tax Appellate Tribunal *(hereinafter, 'CESTAT')* in Service Tax Appeal No. 51901 of 2019 *(hereinafter, 'impugned order').*

3. A brief background of the present case is that, the Respondent- M/s Nexus Alliance Advertising and Marketing Pvt Ltd is engaged in providing advertising agency services and selling of spaces and timeslots for advertising

in both print and electronic media.

4. The Director General of GST Intelligence had carried out an investigation against the Respondent, wherein certain agreements which it had entered into with media houses were retrieved. On the basis of the said agreements, a case was made against the Respondent that it was receiving certain commission on the gross billed amount and thereafter certain amounts were being retained as remuneration/income.

5. As per Section 66D (g) of the Finance Act, 1994 *(hereinafter, 'the Act')* the activity of '*selling of space slots for advertisements in print media*' was non-taxable. However, insofar as broadcasters are concerned, it is not in dispute that the service tax obligation was being discharged.

6. The issue that arose was in respect of a particular statement dated 24th September, 2018, which was recorded of Mr.Mohit Khurana, Manager (Finance) of the Respondent, wherein a statement was made that in respect of broadcasters and other media companies, upon achieving a particular target certain performance incentives were being given.

7. According to the Department, the incentives received by the Respondent translate to performing business promotion of media owners and constituted '*business auxiliary service*'. This activity constituted a declared services in terms of Section 66E(e) of the Act, which reads as under:

> *"66E. The following shall constitute declared services, namely:-*
>
> *xxx*
>
> *(e)agreeing to the obligation to refrain from an act, or to tolerate an act or situation, or to do an act"*

8. The Show Cause Notice dated 17th October, 2018 was issued to the

Respondent by the DGGI, proposing to recover service tax from the Respondent along with interest and penalties, on the amount of incentives received.

9. Thereafter, the Order-in-Original dated 1st March, 2019 was passed by the Principal Commissioner of CGST, Delhi South Commissionerate *(hereinafter, 'OIO')* dropping the proceedings against the Respondent in the following terms:

> *"* ***ORDER***
> *I, hereby, drop the proceedings initiated against M/s Nexus Alliance Advertising & Marketing (P) Ltd., D-8/1, Okhla Industrial Area, Phase- 2, New Delhi-110020, vide Show Cause Notice issued under F.No.: DZU/ INV/E/ST/366/2016 dated 17.10.2018. Accordingly, neither any demand can be raised against them nor can any penalty be imposed upon M/s Nexus Alliance Advertising & Marketing (P) Ltd. and also upon Shri Jogesh Bhutani."*

10. *Vide* the OIO, the Adjudicating Authority in fact held that the component of incentive received by the Respondent would not be susceptible to service tax as no service is being rendered by the Respondent to the media houses, in respect of the said incentives. The finding in this regard is set out below:

> *"30. Thus, following the ratio decidendi of the aforesaid judgement,* ***I hold that in the instant case also, the component of "incentive received" shall not be susceptible to levy of Service Tax as no service is being rendered by Nexus to media houses/ owners for the" purposes of earning such incentive from them.*** *This also gets fortified from the confirmatory letters submitted by nexus whereby different media houses/*

> *owners have confirmed that Nexus is not rendering them any taxable service and on the contrary, they are rendering space booking services to Nexus. Hence, for the aforesaid reasons and considering the ratio decidendi of the aforesaid judgement, the demand of Service Tax, as raised vide the subject SCN, is dropped in favour of Nexus.*
>
> *31. As the prime issue under consideration in the instant case has been held in favour of Nexus, hence, there is no requirement of discussing other ancillary/ consequential issues, viz. charging of interest, imposition of penalty etc. which depended upon the said prime issue. For this reason, no penalty is also being imposed upon Shri Jogesh Bhutani."*

11. Pursuant thereto, the Department preferred an appeal against the OIO, before the CESTAT, and the CESTAT *vide* the impugned order held that the service tax would not be liable to be paid on the incentives received by the Respondent. The findings of the CESTAT are set out below:

> *"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 media 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."

12. Ld. Counsel for the Appellant has vehemently argued that the CESTAT, being the last fact finding authority, has completely ignored the statements made by the Mr.Mohit Khurana, Manager (Finance) of the Respondent, who had stated as under:

"7.3A Shri. Mohit Khurana, in his further statement dated 24.09.2018 (RUD-6) inter-alia. stated:

xxx

(vii) on being asked regarding nature of income booked as "Incentive received" in the Balance sheet, he stated that their company had agreement with various print media (Press) and Broadcasting Media (TV. Radio etc.) for achieving the revenue target of advertisement fixed for a particular financial year; that at the beginning of the F.Y. they entered into agreement with Press or Broadcasters;

(viii) that by signing such agreements, they abide by various terms & conditions of the agreement including fulfillment of revenue target;

(ix) that on fulfilling the specified target of revenue and other terms and conditions mentioned in each agreement, which may differ from Media to Media, they became eligible for getting incentive for a particular slab;

(x) that the incentive received from print media is over and above the Agency Commission. which they had received in terms of basic Agreements. being approved and accredited Agency of INS;

xi) that this was an incentive for them for getting the targeted business in the Media therefore they do not pass on any portion of such incentive to the Advertisers;"

13. In terms of the above statement, ld. Counsel for the Appellant submits that once a specific revenue target of advertisement was achieved, only then the incentives were given and hence this would constitute an additional service.

14. The Court has considered the matter. An advertising agency primarily books slots on electronic media and books space in the print media on behalf of its clients. The advertising plans are negotiated with the media houses, with the help of the advertising agency and are finally approved by the clients. The advertising agency merely renders service as per the advertising plans which

are approved by its clients and does not render any additional service to the media house.

15. Moreover, achieving targets or revenue benchmarks are part of the service that is already being rendered and since there is no additional service to the media house, it cannot be held that the incentives which are given by the media houses would be liable to service tax as it constitutes a '*business auxiliary service*'.

16. Additionally, even under Section 66E(e) of the Act, the advertising agency is neither carrying out any specific act nor is refraining from any specific act. Primarily, the advertising agency is rendering service on behalf of its clients to book the slots and space with the media houses.

17. Further, Section 66E(e) of the Act has also been clarified by the ***Circular No. 214/1/2023- Service Tax*** dated 28th February, 2023 issued by Ministry of Finance, Department of Revenue, Central Board of Indirect Tax and Customs *(hereinafter, 'the circular')*. The relevant portion of the circular reads as under:

> *"[…]*
> *2. It may be seen that "Agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act" is a Declared Service as per clause (e) of section 66E of the Finance Act, 1994. A service conceived in an agreement where one person agrees to an obligation to refrain from an act or to tolerate an act or to do an act, would be a 'declared service' under section 66E(e) read with section 65B(44) and would be leviable to service tax.*
>
> *3. The description of the declared service in question, namely, agreeing to the obligation to refrain from an act or to tolerate an act or a situation, or to do an act is*

similar in GST. "Agreeing to the obligation to refrain from an act or to tolerate an act or a situation, or to do an act" has been specifically declared to be a supply of service in para 5 (e) of Schedule II of the CGST Act, 2017.

4. As can be seen, the said expression has three limbs: - i) Agreeing to the obligation to refrain from an act, ii) Agreeing to the obligation to tolerate an act or a situation, iii) Agreeing to the obligation to do an act. Service of agreeing to the obligation to refrain from an act or to tolerate an act or a situation, or to do an act is nothing but a contractual agreement. A contract to do something or to abstain from doing something cannot be said to have taken place unless there are two parties, one of which expressly or impliedly agrees to do or abstain from doing something and the other agrees to pay consideration to the first party for doing or abstaining from such an act. Such contractual arrangement must be an independent arrangement in its own right. There must be a necessary and sufficient nexus between the supply (i.e. agreement to do or to abstain from doing something) and the consideration."

18. A perusal of the above would show that there are three components of 66 E(e) of the Act:

i. Agreeing to refrain from an act;

ii. Agreeing to tolerate an act or a situation;

iii. Agreeing to do an act.

19. All the three components require a contract. In the present case, the contract though executed by the Respondent with the media house, is for and on behalf of the client. The Respondent is rendering services to its client and not to the media house.

20. Additionally, in ***W.P.(C) 7542/2018*** titled ***Mahanagar Telephone Nigam Ltd. v. Union of India and Ors.*** a Coordinate Bench of this Court, while interpreting whether surrendering of spectrum by MTNL would constitute a declared service or not, in terms of Section 66 E(e) of the Act had observed as under:

> *"46. Thus, in order to constitute a 'service', the same must involve an activity carried out by a person for another. And the same should be for a consideration. The term 'service' also includes a "declared service".*
>
> *xxx*
>
> *49. According to the respondents, the receipt of compensation is covered under clause covered under clause (e) Section 66E of the Act. It is relevant to refer to said clause and the same is set out below:*
>
> > *"**66-E. Declared services.** – _The following shall constitute declared services, namely-*
> > *** *** ***
> >
> > *(e) agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act;"*
>
> *xxx*
>
> *50. The first limb of Clause (e) of Section 66E of the Act relates to an obligation to refrain from an act or tolerate an act or a situation or to do any act. It is difficult to accept that MTNL had agreed to forbade doing any act as is contended on behalf of the respondents; it had merely agreed to surrender allocation of an asset. It did not agree to tolerate an act. The spectrum is a public asset and its allocation is controlled by the Government of India. A specific band was allocated to MTNL for providing telecommunication service. Since MTNL had made investments for rendering services using the allocated spectrum, the Government of India had decided to provide financial support on MTNL vacating*

> *the spectrum. It would be a stretch to construe this as forbearance of an act or tolerating an act.*

21. In ***W.P.(C) 8896/2023*** titled ***Just Click Travels Pvt. Ltd. v. Union of India and Ors***., the Coordinate Bench of this Court was dealing with certain incentive payments which were received by the Petitioner with the use of the Central Reservation system for booking of airline tickets, etc. In the said context, the question was whether the said incentives would constitute a service or not. The Court followed the decision of a larger bench of CESTAT in ***Appeal No. ST/59716/2013*** titled ***Kafila Hospitality & Travels Pvt. Ltd. vs. Commr. Of S.T, Delhi*** which held as under:

> *"[…]*
> ***83.*** *These contentions as to whether the air travel agent is promoting the business of the airlines or the CRS Companies have been dealt with in the earlier portion of this order. The order also discusses whether the classification of service would fall under "air travel agents" services or under "BAS" and whether incentives paid for achieving the targets are taxable.*
>
> ***84. The inevitable conclusion, therefore, that follows from the above discussion is as follows:***
> ***(i) the air travel agent is promoting its own business and is not promoting the business of the airlines;***
> ***(ii) the air travel agent is not promoting the business of the CRS companies;***
> ***(iii) in any view of the matter, the classification of the service would fall under "air travel agent" service and not "BAS" in terms of the provisions of Section 65A of the Finance Act; and***
> ***(iv) the incentives paid for achieving the targets are not leviable to service tax***."

22. Thus, in terms of the above decision, the use of the Central Reservation

system created by companies was held to be an *air travel agent service* and not the *'business auxiliary service'*.

23. In the present case, there is no additional service or component of service which was rendered by the Respondent. Moreover, in terms of the ***Circular*** extracted above, the Respondent was the advertising agent and does not expressly or impliedly agree to do or abstain to do anything. It merely performs its services on behalf of its own clients and it has no separate obligation or contract with the media houses apart from what has been agreed by clients.

24. Thus, in the opinion of this Court, there is no question of law that arises for consideration in this matter.

25. The findings of the Adjudicating Authority and the CESTAT are concurrent in nature. This Court is thus, not inclined to entertain the present appeal.

26. The appeal, along with pending applications, is dismissed in the above terms.

PRATHIBA M. SINGH
JUDGE

SHAIL JAIN
JUDGE

DECEMBER 5, 2025
kk/sm