

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI
PRINCIPAL BENCH, COURT NO. 4**

SERVICE TAX APPEAL NO. 51826 OF 2017

[Arising out of Order in Original No. RPR/EXCUS/000/COM/022/2017 dated 24.08.2017 passed by the Pr. Commissioner, Central GST Bhawan, Raipur(CG)]

M/S CHHATTISGARH SAMVAD

.....APPELLANT

Chhotapara, Near Directorate of Public Relations
Raipur (CG)

Vs.

PRINCIPAL COMMISSIONER

.....RESPONDENT

Central GST Bhawan,
Tikrapara, Dhamtari Raod,
Raipur (CG)

Appearance:

Shri A.K. Batra, Chartered Accountant for the Appellant
Shri Anand Narayan, Authorised Representative for the Respondent

CORAM:

HON'BLE DR. RACHNA GUPTA, MEMBER (JUDICIAL)

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

FINAL ORDER NO. 50812 /2025

DATE OF HEARING : 11/03/2025

DATE OF DECISION : 02/06/2025

P.V. SUBBA RAO:

1. M/s. Chattishgarh Samvad¹ filed this appeal to assail the Order dated 24.8.2017² passed by the Principal Commissioner in which he confirmed the demand of service tax of Rs. 11,93,60,235/- on the appellant along with interest under section 75 of the Finance Act, 1994³ and imposed an equal amount as penalty under section 78 of the Act.

1 The appellant
2 Impugned order
3 Act

2. The appellant was created as an associate organization of the Department of Public Relations, Government of Chhattisgarh to provide multi-media advertising and publicity for various schemes of that Government. The departments and organizations place orders on the appellant which has an in-house expert team to prepare the content for the advertisements, hoardings, ad-films, posters, etc. After the designs are approved by the client department, the appellant gets the advertisements published through empanelled agencies which prepare the hoardings, audio visuals, etc. and publish the advertisements.

3. The appellant invoices the client department for a consolidated sum towards the amounts charged by the empanelled agencies, service tax on their services and 10% or 15% as its service charges and service tax on its service charges. The appellant collects the entire amount and pays the empanelled agencies for their services. The appellant was registered with the service tax department and has been filing Service Tax Returns.

4. The appellant's records for the period 1.4.2011 to 30.6.2015 were audited and it was felt that the appellant had not paid service tax on certain services which it had rendered and also that it had collected certain sums from the clients as representing service tax but did not deposit the amounts as service tax. Accordingly, a Show Cause Notice dated 10.10.2016 was issued to the appellant which culminated in the impugned order.

5. We have heard Shri A.K. Batra, learned Chartered Accountant for the appellant and Shri Anand Narayanan, learned authorized representative for the Revenue and perused the records.

Submissions on behalf of the appellant

6. Learned Chartered Accountant for the appellant contested the demand on merits as well as on limitation and made the following submissions:

(i) Of the total demand, the demand for the period 1.4.2011 to 30.9.2013 is time barred as the SCN was issued after more than 30 months. The demand from 1.10.2013 to 20.9.2015 was within the normal period of limitation.

(ii) The appellant was previously audited by the Central Excise Department on the same issues and an SCN dated 30.5.2011 had been issued to the appellant. Therefore, the department cannot say that it was not aware how the appellant conducts its business or that the appellant had suppressed any facts in this SCN which was issued for a subsequent period. Reliance is placed on **Nizam Sugar Factory vs Collector of Central Excise, AP⁴**.

(iii) Therefore, it cannot be said that the appellant had not paid or short paid service tax by reason of fraud or collusion or wilful mis-statement or suppression of facts or violation of the provisions of the Act or Rules with an intent to evade

payment of service tax. Without one of these elements being established, extended period of limitation cannot be invoked.

(iv) Since the elements required to impose penalty under section 78 are the same as the ones required to invoke extended period of limitation, penalty under section 78 also cannot be sustained.

(v) The total demand of Rs. 11,93,60,235/- confirmed in the impugned order is on account of the following:

a) Demand of service tax on sale of space for advertisements	Rs. 2,54,66,253/-
b) Demand of service tax which was collected from the clients and paid to the empanelled agencies	Rs.8,37,18,644/-
c) Demand on 10% service charges collected in respect of printing work under the head 'Advertising agency service' in the pre-negative list regime	Rs. 24,22,055/-
d) Demand on 10% service charges collected in respect of printing work during the post negative list period	Rs. 77,53,283/-
Total	Rs. 11,93,60,235/-

(vi) The appellant invoiced its clients the government departments as illustrated below:

Printing

Cost of printing	Rs. 100	No service tax was charged to the clients nor was it paid
Service charges @10%	Rs.10	
Total	Rs. 110	

Electronic media

Advertisement charges in electronic media	85.00	Charges paid to the empanelled agency
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(85% of the gross amount of Rs. 100/-)		
Service tax @15% on Rs. 85/-	12.75	Service tax paid reimbursed to the empanelled agency
Service charges of the appellant @15%	15.00	Charges of the appellant
Service tax on service charges of Rs. 15/-	2.25	Service tax on the service charges paid by the appellant
Total	115.00	

(vii) As far as the services rendered towards print media are concerned, they were exempted by notification no. 14/2004-ST dated 10.9.2004 during the pre-negative list and by entry no. 30 of notification no. 25/2012-ST dated 20.6.2012 during the post negative list regime. Therefore, no service tax was payable and none was paid.

(viii) Selling of space or time for advertisement as defined under section 65(105) (zzzm) of the Act was not taxable before 1.7.2012. After 1.7.2012, selling of space or time slots for advertisements other than advertisements broadcast by radio or television were exempted as per section 66D (g) of the Act until 1.10.2014. After 1.10.2014, the appellant has been paying service tax.

(ix) As far as the demand of service tax amounting to Rs. 8,37,28,644/- which is said to have been collected by the appellant as service tax and not deposited is concerned, these amounts were invoiced by the empanelled agencies and the appellant collected these amounts from the client departments and paid to the empanelled agencies.

(x) In view of the above, the appeal may be allowed and the impugned order may be set aside.

Submissions of Revenue

7. Learned authorized representative for the Revenue vehemently supported the impugned order.

Findings

8. We have considered the submissions advanced by both sides and perused the records. The demand in this case covers both the normal and extended period of limitation. Demand invoking extended period of limitation can be invoked only if the non-payment or short payment of service tax is by virtue of fraud, collusion, wilful mis-statement or suppression of facts or violation of the provisions the Act or Rules with an intent to evade paying service tax. Similar provisions were in the Central Excise Act, 1944 and the Supreme Court in **Nizam Sugar Factory** held that when the facts are known to both sides, the assessee cannot be alleged to have suppressed the facts and extended period of limitation could not be invoked.

9. In this case, there is no dispute that the appellant was registered with the service tax department and had been self-assessing service tax and filing returns. If the returns are filed, it is the responsibility of the officer to scrutinize them and for this purpose, he can also call for any records and scrutinize them. If the officer failed to do so and if some tax escapes assessment and it is later discovered by the audit, the fault lies at the

doorstep of the officer. The negligence of the officer cannot be called suppression by the assessee. Learned counsel submits that the appellant was previously audited and an SCN was issued on the same grounds. If that be so, we are surprised why the range officer with whom the returns were filed had not checked them and raised demands periodically.

10. In view of the above, we find that the ratio of **Nizam Sugar Factory** squarely applies to this case and the demand for extended period of limitation cannot be sustained.

11. Since the normal period of limitation is only from 1.10.2013, only the provisions applicable to the post negative list regime (from 1.7.2012) would apply. We need not examine the provisions of pre-negative list as the demand for the negative list regime is barred by time anyway. We now examine the various components of the confirmed demand.

Demand of service tax on sale of space for advertisements

12. According to the learned Chartered Accountant for the appellant, during the post negative list period, Section 66D listed negative list of services (on which no service tax had to be paid). Service tax had to be paid on all other services. S.No. (g) of this list read as follows:

Before 2014

“(g) selling of space or time slots for advertisements other than advertisements broadcast by radio or television”

After 2014

“(g) selling of space for advertisements in print media”

13. According to the learned chartered accountant, the entire demand in this case is of service tax on sale of space for advertisements prior to 2014 and the appellant had been paying service tax from 2014. If that be so, the demand on this count cannot be sustained and needs to be set aside subject to verification by the Commissioner.

Demand of service tax said to have been collected from the client departments and not deposited

14. According to the appellant, it had invoiced the client departments what the empanelled agencies had charged and service tax on such amounts and its own service charges and service tax on it. It paid the service tax on its service charges and there is no dispute about it. The amounts which it had collected towards service tax in the invoices raised by the empanelled agencies were collected by the appellant and paid to the empanelled agencies. The appellant had not retained any amounts.

15. We find that the Commissioner did not agree with this submission in the impugned order for the reason that the appellant had not produced evidence that the amounts were paid to the empanelled agencies. Learned Chartered Accountant for the appellant submitted before us voluminous documents to substantiate his assertion that the amounts collected as service tax were paid to the empanelled agencies.

16. We find that it would be appropriate for the Commissioner to verify the documents. To the extent the amounts have been paid to the empanelled agencies, no service tax can again be demanded from the appellant. If any amount collected as service tax has not been deposited as service tax or paid to the empanelled agency, such amount alone, needs to be deposited as per section 73A of the Act.

Demand of service tax on service charges collected for printing

17. This demand is of two types- pre-negative list demand and the post negative list demand. As we have held that extended period of limitation was wrongly invoked in this case and that the entire normal period of limitation falls in the post negative list regime, it is not necessary for us to consider the provisions relating to the pre-negative list regime. We proceed to examine this demand in the post negative list regime.

18. As per the requirements of the client departments, the appellant used its in-house experts to prepare posters, leaflets, booklets, manuals, etc. and got them printed through the empanelled agencies. It invoiced the client department, the amounts charged by the empanelled agencies and 10% as its service charges. All services were taxable except what were under the negative list. The submission of the learned chartered Accountant is that in the post negative list regime, the services of the appellant were exempted by notification no. 25/2012-ST dated 20.6.2012 (S.No. 30). This notification provides exemption to various services. S.No. 30 reads as follows:

"30. Services by way of carrying out,-

(i) any process amounting to manufacture or production of good excluding alcoholic liquor for human consumption;

or

(ii) any **intermediate production process as job work** not amounting to manufacture or production in relation to-

(a) agriculture, **printing** or textile processing;

*****"

19. What is exempted under this notification is any intermediate production process as job work in relation to printing. What the appellant did is not a job work. It had contracts from the client departments contracts for getting the brochures, manuals, etc. printed. It engaged someone else to do the job of printing after preparing content using its in-house expertise. The appellant was, by no stretch of imagination a job worker to a printer. The printer, in fact, was the appellant's sub-contractor. Therefore, the appellant's service is clearly not covered by this exemption notification. The appellant is liable to pay service tax on the service charges which it had collected from the client departments towards printing work but only within the normal period of limitation.

20. In view of the above, the appeal is partly allowed as follows:

a) The demand for extended period of limitation and the penalty under section 78 of the Act are set aside.

b) The demand of service tax on selling of space for advertisements is payable only after 2014 and according to the appellant, the entire demand under this head is for the period before 2014. The demand is accordingly set aside subject to verification by the Commissioner. If any part of the demand in the impugned order under this head pertains to the post 2014 period, the demand is upheld to that extent.

c) The demand of amounts said to have been collected as service tax from the client departments and not deposited need not be deposited to the extent they were merely collected and paid to the empanelled agencies. The Commissioner may verify the documents for the purpose. The appellant shall submit all documents to the Commissioner within four weeks from the date of this order.

d) Service tax on service charges on printing collected in the post negative list is upheld.

21. The appeal is partly allowed and is remanded to the Commissioner solely for verification and computation as above.

[Order pronounced on **02/06/2025**]

(DR. RACHNA GUPTA)
MEMBER (JUDICIAL)

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