आयुक्त का कार्यालय
OFFICE OF THE COMMISSIONER
केंद्रीय वस्तु एवं सेवा कर तथा केंद्रीय उत्पाद शुल्क, अहमदाबाद उत्तर
CENTRAL GOODS & SERVICES TAX & CENTRAL EXCISE, AHMEDABAD NORTH
पहली मंजिल, कस्टम हाउस, नवरंगपुरा, अहमदाबाद – 380009
FIRST FLOOR, CUSTOM HOUSE, NAVRANGPURA, AHMEDABAD – 380009
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निबन्धित पावती डाक द्वारा/By R.P.A.D

फा.सं./F.No. STC/15-86/OA/2020

आदेश की तारीख/Date of Order:- 10.02.2022

जारी करने की तारीख/Date of Issue :- 10.02.2022

DIN NO: 20220264WT000000A076

द्वारा पारित/Passed by:- आर गुलजार बेगम */R. GULZAR BEGUM*

अपर आयुक्त / *Additional Commissioner*

मूल आदेश संख्या / Order-In-Original No. 61/ADC/GB/2021-22

जिस व्यक्ति)यों (को यह प्रति भेजी जाती है ,उसके/उनके निजी प्रयोग के लिए मुफ्त प्रदान की जाती है।
This copy is granted free of charge for private use of the person(s) to whom it is sent.

इस आदेश से असन्तुष्ट कोई भी व्यक्ति इस आदेश के विरूद्ध अपील ,इसकी प्राप्ति से) 60 साठ (दिन के अन्दर आयुक्त) अपील ,(केन्द्रीय वस्तु एवं सेवा कर एवं उत्पाद शुल्क ,केन्द्रीय उत्पाद शुल्क भवन ,अंबावाड़ी ,अहमदाबाद-380015को प्रारूप संख्या इ.ए (1-.A.E) 1-में दाखिल कर सकता है। इस अपील पर रू) 2.00 .दो रुपये (का न्यायालय शुल्क टिकट लगा होना चाहिए।

Any person deeming himself aggrieved by this order may appeal against this order in form EA-1 to the Commissioner(Appeals), Central GST & Central Excise, Central Excise Building, Ambawadi, Ahmedabad-380015 within sixty days from the date of its communication. The appeal should bear a court fee stamp of Rs. 2.00 only.

इस आदेश के विरुद्ध आयुक्त के शुल्क गये मांगे पहले से करने अपील में (अपील) 7.5% का भुगतान करना होगा, जहाँ शुल्क यानि की विवादग्रस्त शुल्क या विवादग्रस्त शुल्क एवं दंड या विवादग्रस्त दंड शामिल है।

An appeal against this order shall lie before the Commissioner (Appeal) on payment of 7.5% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute. (as per amendment in Section 35F of Central Excise Act,1944 dated 06.08.2014)

उक्त अपील ,अपीलकर्ता द्वारा प्रारूप संख्या इ.ए 1-.में दो प्रतियों में दाखिल की जानी चाहिए। उस पर केन्द्रीय उत्पाद शुल्क) अपील (नियमावली 2001 के नियम 3 के प्रावधानों के अनुसार हस्ताक्षर किए जाने चाहिए। उक्त अपील के साथ निम्नलिखित दस्तावेज संलग्न किए जाएं।

(1) उक्त अपील की प्रति।

(2) निर्णय की प्रतियाँ अथवा जिस आदेश के विरूद्ध अपील की गई है, उनमें से कम से कम एक प्रमाणित प्रति हो, या दूसरे आदेश की प्रति जिसपर रू) 2.00 .दो रूपये (का न्यायालय शुल्क टिकट लगा होना चाहिए।

The appeal should be filed in form EA-1 in duplicate. It should be signed by the appellant in accordance with the provisions of Rule 3 of Central Excise (Appeals) Rules, 2001. It should be accompanied with the following:

(1) Copy of accompanied Appeal.

(2) Copies of the decision or, one of which at least shall be certified copy, the order Appealed against OR the other order which must bear a court fee stamp of Rs.2.00.

विषय:- कारण बताओ सूचना/ Show Cause Notice **No. STC/15-86/OA/2020 dated 29.09.2020 and** issued to **M/s. Sharp Media Services**, Prop. Pinal Arvindbhai Shah situated at Oxford Tower, SF 3 Nr. Gurukul Road, Gurukul, Memnagar, Ahmedabad.

BRIEF FACTS OF THE CASE

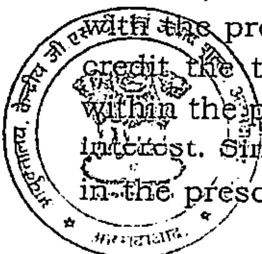
M/s. Sharp Media Services, Prop. Pinal Arvindbhai Shah, Oxford Tower, SF 3 Nr. Gurukul Road, Gurukul, Memnagar, Ahmedabad Gujarat- (hereinafter referred to as the 'Assessee' for the sake of brevity) is registered under Service Tax having Registration No.-ACJPS9696PSD001. On perusal of the third party CBDT data for the Financial Year 2014-15, 2015-16 and 2016-17 it has been observed that the assessee has declared less taxable value in their Service Tax Return (ST-3) as compared to the Service related taxable value they have declared in their Income Tax Return (ITR)/ Form 26AS, the details of which are as under:

(Amount in Rs.)

	F. Y.	Total Amount paid/Credited Under 194C, 194H, 194I, 194J	Gross_Value_Service_Provided (as per ST-3 returns.	Difference Between Total Amount paid/Credited from TDS and Gross Value in Service Tax Provided	Resultant Service Tax short paid (including Cess)
1	2014-15	47336709	13612945	33723764	4168257
2	2015-16	44,26472	10605973	34020499	4932972
3	2016-17	21298001	7701399	13596602	2039490
			Total		11140719

2. Letters dated 08.02.2018, 12.06.2019 and 17.07.2020 were issued to the said assessee to explain the reasons for such difference and to submit documents in support thereof viz. Balance Sheet, Profit & Loss Account, Income Tax Returns, Form 26AS, Service Income and Service Tax Ledger and Service Tax (ST-3) Returns. However, the said assessee neither submitted any details/documents explaining such difference nor responded to the letters in any manner.

3. Section 68 of the Finance Act, 1994 provides that 'every person liable to pay service tax shall pay service tax at the rate specified in Section 66/66B ibid in such a manner and within such period which is prescribed under Rule 6 of the Service Tax Rules, 1994. In the instant case, the said notice had not paid service tax as worked out as above in Table. As per section 70 of the Finance Act 1994, every person liable to pay service tax is required to himself assess the tax due on the services provided/received by him and thereafter furnish a return to the jurisdictional Superintendent of Service Tax by disclosing wholly & truly all material facts in their service tax returns (ST-3returns). The form, manner and frequency of return are prescribed under Rule 7 of the Service Tax Rules, 1994. In this case, it appears that the said service provider has not assessed the tax dues properly, on the services received by him, as discussed above, and failed to file correct ST-3 Returns thereby violated the provisions of Section 70(1)of the act read with Rule 7 of the Service Tax Rules, 1994. Further, as per Section 75 ibid, every person liable to pay the tax in accordance with the provisions of Section 68 ibid, or rules made there under, who fails to credit the tax or any part thereof to the account of the Central Government within the prescribed period is liable to pay the interest at the applicable rate of interest. Since the service provider has failed to pay their Service Tax liabilities in the prescribed time limit, they are liable to pay the said amount along with



interest. Thus, the said Service Tax is required to be recovered from the noticee along with interest under Section 75of the Finance Act, 1994.

4. In view of the above, the Assessee has contravened the provisions of Section 68 of the Finance Act, 1994 read with Rule 6 of Service tax Rules, 1994 in as much as they failed to pay/ short paid/ deposit Service Tax to the extent of Rs.11140719/-(including Cess), by filing ST-3 Returns vis-a-vis their ITR/ Form 26AS, in such manner and within such period prescribed in respect of taxable services received /provided by them; Section 70 of Finance Act 1994 in as much they failed to properly assess their service tax liability under Rule 2(1)(d) of Service Tax Rules, 1994. At no point of time, the Assessee has disclosed or intimated to the Department regarding receipt/providing of Service of the differential value, that has come to the notice of the Department only after going through the third party CBDT data generated. The Government has from the very beginning placed full trust on the service providers and accordingly measures like self-assessment etc, based on mutual trust and confidence are in place. From the evidences, it was found that the said assessee has knowingly suppressed the facts regarding receipt of/providing of services by them worth the differential value as can be seen in the table hereinabove and thereby not paid / short paid/ not deposited Service Tax thereof to the extent of Rs.1,11,40,719/-(including Cess)/-. It was noticed that the above act of omission on the part of the Assessee resulted into non-payment of Service tax on account of suppression of material facts and contravention of provisions of Finance Act, 1994 with intent to evade payment of Service tax to the extent mentioned hereinabove. Hence, the same appears to be recoverable from them under the provisions of Section 73(1) of the Finance Act, 1994 by invoking extended period of time, along with Interest thereof at appropriate rate under the provisions of Section 75 of the Finance Act, 1994. Since the above act of omission on the part of the Assessee constitute offence of the nature specified under Section 78 of the Finance Act, 1994, it appears that the Assessee has rendered themselves liable for penalty under Section 78 of the Finance Act, 1994, and penalty under provisions of Rule 7C of the Service Tax Rules, 1994. Therefore Show Cause Notice dated 29.09.2020 was issued to M/s. Sharp Media Services asking them to show cause as to why:

(i) The demand for Service tax to the extent of Rs.1,11,40,719/-(Rupees One Crore Eleven Lakh Forty Thousand Seven Hundred Nineteen Only) short paid /not paid by them, should not be confirmed and recovered from them under the provisions of Section 73 of the Finance Act, 1994;

(ii) Interest at the appropriate rate should not be recovered from them under the provisions of Section 75 of the Finance Act, 1994;

(iii) Penalty should not be imposed upon them under the provisions of Section 78 of the Finance Act, 1994.

(iv) Penalty should not be imposed upon them for late filing ST-3 return for the period April'2014-September'2014 under the provisions of Rule 7C of the Service Tax Rules, 1994.

(v) Penalty should not be imposed upon them under the provisions of Section 77(1)of the Finance Act, 1994, for failure to provide documents/details for further verification in a manner as provided under Section 77 of the Service Tax Act,1994.

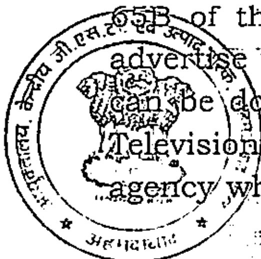
(vi) Penalty under Section 77(2) of the Finance Act, 1994 should not be imposed on them for the failure to assess their correct Service Tax liability and failed to file correct Service Tax Returns, as required under Section 70 of the Finance Act,1994 read with Rule 7 of the Service Tax Rules, 1994.

DEFENCE REPLY

5. Vide their letter dated Nil received on this office on 29.12.2021, the assessee submitted that they are providing advertisement agency services for which they had taken service tax registration on 11.08.2010. Based on the details received from Income tax department and comparing the receipt shown in Form 26AS with ST-3 returns filed by them, the show cause notice alleges that they have short paid service tax of Rs.1,11,40,719/- department has noted fact that in SCN, they had preliminary verification and not detailed verification. On the basis of said preliminary verification they have issued SCN. However, the contention of the department is not correct. In support of the same they submitted reconciliation of the Income as per their books of account, P& L Account in the respective year and its comparison with the details submitted in ST-3 returns. They submitted the following reconciliation of the Income as per Profit and Loss account, 26AS and shown in the ST-3 returns.

	Type of Sales	2014-15	2015-16	2016-17
A	Print Media Sales - Without Commission	739195	0	
B	News Paper Sales (85% Value)	63710588	49717190	24668323
C	Print Media Sales - Without Commission	4200850	0	438833
D	Discount Given	1698361	5472289	3300619
E	Net (A+B+C-D)	66952272	44244901	21806537
F	Assessable Value as Per Books	13612945	10578731	7701399
G	Sales As Per Books	80565217	54823632	29507937
H	Assessable Value as Per ST 3	13612945	10605973	7701399
F-H	Difference between value declared in ST 3 vs Books	0	-27242	0

6. The said assessee further contended that the amount arrived at E and Commission received and shown at F to gather, is their sales value as per books. Here it is pertinent to mention that amount shown at E above is not considered as taxable value as per explanation given below. The assessable value shown at F and the same declared in ST-3 shown at H, it can be seen that they have not short paid service tax as alleged in the show cause notice. Hence the demand of service tax of Rs.1,11,40,719/- is simply based on the difference between the receipt shown in26AS and ST-3 return is not correct in view of the reconciliation presented in above able. They further submitted that they are providing the advertisement agency service which defined in Section 65B of the Finance Act, 1994. A person or an organization who wants to advertise their product approaches an advertising agency. The advertisement can be done in various ways either through Print Media or through Radio or Television, etc. in order to fulfill the requirements of his client the advertising agency which is the service provider gets in touch with the appropriate media.



In order to provide advertising services, the advertising agency charges certain amounts from the clients. With regard to the relationship between the advertising agency and the media, the advertising agency has to pay amount to the media. The media such as broadcasting agency charges the advertising agency for insertion of the advertisement either in Print Media or in Television. In the present case, the media gives a commission of 15% to the advertising agency. On such commission of 15% the assessee has paid service tax. The reconciliation of the service tax return and books of accounts for the period 2014-15 to 2016-17 is attached. They claim that they are required to pay the servie tax on 15% commission received from print media and not the entire amount received. In support of their claim the said assessee has also relied upon the following case laws:

P. Gautam& Co. Vs. Commissioner of Service Tax, Ahmedabad [2011 (24) STR 447 (Tri. – Ahmd.) it is held that *Discount and incentives received by advertising agency from the print media. Such amount being discounts and incentives and not charges for services not to be considered for taxability under Business Auxiliary Services when itself not taxable under Advertising Agency services.*

- **Hon'ble Delhi CESTAT**, in case of **Mccann Erickson (I) Pvt Ltd. Vs. Commr. of Service Tax, Delhi [2008(10) STR 365 (Tr. – Del.)** it is held that *Commission received @ 15% from print/electronic media for advertisements and passed on to recipients. Service tax leviable on gross amount received by service provider from the recipient for services rendered. Media giving discount to appellant not to be considered as clients. Discount given by media not related to gross amount received from service recipients.*

Hon'ble CESTAT Delhi in case of **M/s. Rohan Motors Ltd Vs. Commissioner of Central Excise, Dehradun [2020-TIOL-1676-CESTAT-DEL]** held as under: *"The assessee has to undertake certain sales promotion activities. The carrying out of such activities by assessee is for the mutual benefit of their business as well as the business of MUL. The amount of incentives received on such account cannot, therefore, be treated as consideration for any service. The incentives received by assessee cannot, therefore, be leviable to service tax."*

Hon'ble Mumbai CESTAT in case of **M/s. Grey Worldwide (I) Pvtb Ltd Vs. Commissioner of Service Tax, Mumbai [2015 (37) STR 597 (Tri.-Mumbai)]** held that *The assessee merely coordinating between media and adviser and no contractual obligation between advertising agency and media for provision of any services. Tribunal consistently observing incentives received by advertising agency from media without any contractual obligation to render any service; cannot be levied to service tax.*

Hon'ble Bangalore CESTAT in case of **Kerala Publicity BireauVs. Commissioner of C.Ex. [2009(9) STR 101 (Tri.-Bang.)]** held that *Incentive in form of discounts are not leviable to service tax and only charges on advertising services are leviable to service tax.*

7. The assessee further submitted that they have discharged full service tax liability on the income of advertising agency commission. Demanding service tax on discount, incentive received from print media will be unreasonable and unlawful. Therefore, the asseessee is not liable to pay any additional service tax. The assessee further draw attention to CBEC's circular No. 341/432001-TRU dated 18-10-2001. Further the service of sale of space in the print media is covered in negative lists of services in Section 66D (g) of the Finance

Act,2012 hence the value which the assessee has claimed at E above is not liable to Service tax. Therefore as explained above, there is no difference in the taxable value declared by us in our ST-3 returns as compared with our Profit & loss account. In view of above the assessee contend that the show cause notice is not sustainable on merit itself. Hence the assessee requests to kindly drop the proceedings on merit it self. They further submitted that the entire SCN has not assertion proposing to levy and collect service tax on the basis of any specified taxable services allegedly rendered by the assessee. The said SCN is issued without doing investigation, business of the assessee and also not bothering about the provisions of the law. In SCN, the department relied on certain documents and mentioned that those documents are listed in Annexure A. The said Annexure is not available with SCN. Moreover, they mentioned in Annexure A that date is available for inspection. But neither address nor contact details are available. It is not possible for the assessee to verify the same. In the COVID time physical inspection to be restricted and person should not be called for physical verification. But in SCN Annexure A mentioned to that information is available for inspection which makes life of the people at risk and breaking government guild lines. While issuing SCN relied upon documents are required to be attached and available with SCN. In this regard they relied upon the following citations in their support.

- M/s. Mahadev Trading Company Vs. Union of India [2020-TIOL-1683-HC-AHM-GST] Sahibabad Printers Vs. Additional Commissioner CGST (Appeals) and 2 others [2021- TIOL-2164-HC-ALL-GST]
- Principal Commissioner Vs. Shubham Electricals [2016(42) STR J312 (Del.)]
- Commissioner of C.Ex., Banglore Vs.Brindavan Beverages (P) Ltd [2007(213) ELT 487 (SC)]
- Commissioner Vs. InterchromePvt Ltd [2004 (164) ELT A128 (SC)]
- Shilpi Enterprise Vs. Commissioner of C.Ex., Allahabad [2017(349) ELT 308(Tri.-All

8. Thus the SCN is issued without applying legal procedure and in mechanical manner. SCN is fails to establish how the discount and incentive are liable to service tax. Therefore, the SCN is vague and incoherent. They further contended that the SCN is time barred and for which they relied upon the following case laws:

- Span Commercial Co. Vs. CCE Ahmedabad-I. Final Order No. A/10185/2020 dated 14.01.2020
- Suzica Color Laboratory Vs. Comissioner of Central Excise and Service Tax, Patna [2020-TIOL-1176-CESTAT-KOL]:
- Guala Closure (India) Pvt. Ltd Vs. CCE , Ahmedabad-II. Final Order No. A/12117/2018 dated 23.08.2018:
- M/s. Concept Motors Pvt. Ltd. V. CST, Ahmedabad. Final Order No. A / 11717 / 2018 dated 07.08.2018:
- M/s. TruvisionColour Lab. Vs. Comm. of Central Excise, Indore [2017 (51) STR 267 (Tri.-Del.)

9. They further submitted that there is no mala fide attributable to assessee to invoke extended period of limitation. Demand beyond period of limitation is time barred. The show cause notice should have been issued within period of 18 / 30 months. SCN issued in respect of ST-3 returns for the period for 2014-15 to 2016-17 is time barred. It can be seen from the facts mentioned above and judicial pronouncement cited above that extended period of five years under proviso under Section 73(1) of the Finance Act,1994 is not invokable. The assessee submits that the levy of service tax was through Chapter V of the Finance Act 1994. Section 173 of the CGST Act provides that

Chapter-V of the Finance Act, 1994 shall be omitted. In other words, it is a case of omission of a Chapter as against repeal of an Act. Finance Act, 1994 does not stand repeaed. They frtehr submitted that penalty under Section 78 is not imposable on them and for which they relied upon the following case laws:

1. Continental Foundation Jt. Venture Vs. CCE, Chandigarh-I 2007 (216) E.L.T. 177 (S.C.)
2. Bhagwati Spherocast Pvt Ltd. Vs. Commr. of C.Ex., Ahmedabad [2019 (368)ELT 308 (Guj.)]
3. Super Shiv Shakti Chemical Pvt Ltd. Vs. Com. of C.Ex., Udaipur [2019 (369) ELT 1279 (Tr.-Delhi)]
4. CCE, TIRUCHIRAPALLI Vs SHRI SUTHAN PROMOTERS 2010-TIOL-623-HC-MAD-ST held as under:
5. RAC Steels Vs. CCE, Salem 2010-TIOL-484-CESTAT-MAD and in case of Rajarani Exports Vs. CCE, Salem (2010) 18 STR .

10 It is evident from the facts mentioned above and judgement of Apex Court that there is no (a) fraud; or (b) collusion; or (c) willful mis-statement; or (d) suppression of facts; or (e) contravention of any of the provisions of this Chapter or of the rules made thereunder with intent to evade payment of service tax. Therefore, penalty under Section 78 should not be imposed.The assessee further submitted that they are eligible for benefit cum duty valuation. The assessee has not charged service tax from the service receivers as the assesseewas under a bona-fide belief that no service tax is payable. It is settled legal position (as per following cases) that when the assessee has not collected service tax from the recipient of service consideration received has to be treated as cum-tax. Foior which they relied upon the following case laws:

i. Commissioner vs. Advantage Media Consultant 2009-14-STR-J49 (SC)
ii. CST, Mumbai Vs. Allied Aviation Ltd 2017-(47)-STR-279 (Tri.-Mumbai)
iii. Turret Industrial Security Pvt. Ltd. vs. CCE& C, Jamshedpur 2008-TIOL-45-CESTAT-KOL
iv. CCE, Patna vs. M/s Advantage Media Consultant 2008-TIOL-548-CESTAT-KOL
v. Municipal Corpn of Delhi vs. Com. of ST, Delhi 2009-TIOL-975-CESTAT-DEL
vi. M/s Robot Detective & Security Agency CCE, Chennai vs. CCE, Chennai 2009-TIOL-238-CESTAT-MAD
vii. M/s ABN Amro Bank vs. CCE, Noida 2011-TIOL-1147-CESTAT-DEL
viii. M/s Speedway Carriers Pvt Ltd vs. Commissioner of Central Excise, Jaipur 2012-TIOL-1230-CESTAT-DEL
ix. Professional Couriers vs. Commissioner of Service Tax, Mumbai 2013 (32) S.T.R. 348 (Tri- Mumbai)
x. CCE, Delhi vs. Maruti Udyog Ltd. 2002-TIOL-34-SC-CX-LB

11. In the present case, the service provider (Assessee) has not collected service tax from the service receivers and therefore provision of section 67 will be applicable and benefit of cum duty valuation is admissible and therefore taxable value is required to be recomputed. The assessee vide letter dated 18.01.2022 further submitted that so far as box advertisement is concerned they are not getting any commission and amount received from the customer is directly required to be deposited in print media. During the year 2014-15 and 2016-17 assessee received and paid Rs.42,00,850/- and Rs.4,38,833/- respectively. Since there is no amount of commission involved the same is not required to be added in the taxable services.

PERSONEL HEARING

12. Personal hearing in this case was fixed on 04.10.2021. Shri Bishan Shah, CA, appeared for the personal hearing duly authorised by the assessee. He reiterated the written submissions presented on 29.12.2020 and requested time for submission of further details. Accordingly they submitted further details on 18.01.2022 & 24.01.2022.

DISCUSSION AND FINDINGS

13. I have carefully gone through the records of the case, submission made by the noticee in reply to the show cause notice, Form 26AS, ITR, ST-3 Returns, Balance sheet for the year 2014-15 to 2016-17. In the present case, Show Cause Notice was issued to the noticee demanding Service Tax of Rs.1,11,40,719/- for the financial year 2014-15 to 2016-17 on the basis of data received from Income Tax authorities and finding that the noticee had obtained Service Tax registration and also filed the ST-3 Returns as stipulated in the Finance Act, 1994 and rules made thereunder. The Show Cause Notice alleged non-payment of Service Tax, charging of interest in terms of Section 75 of the Finance Act, 1994 and penalty under Section 77 and 78 of the Finance Act, 1994. The assessee submitted that they are providing advertisement agency services for which they had taken service tax registration on 11.08.2010. Based on the details received from Income tax department and comparing the receipt shown in Form 26AS with ST-3 returns filed by the them, the show cause notice was issued to receover short paid service tax of Rs.1,11,40,719/- with interest and penalty.

14. The taxability of service tax on sale of space and time for advertisement is governed by Section 65(105)(zzzm) of the Finance Act which reproduced as below :

A. Date of introduction:

01.05.2006 vide Notification No. 15/2006 - ST dt.24.04.2006

B. Definition and scope of service:

"Advertisement" *includes any notice, circular, label, wrapper, document, hoarding or any other audio or visual representation made by means of light, sound, smoke or gas.*

(Section 65(2) of Finance Act, 1994 as amended)

"Sale of space or time for advertisement" *for the purpose of section 65(105) (zzzm), includes,-*

(i) providing space or time, as the case may be, for display, advertising, showcasing of any product or service in video programmes, television programmes or motion pictures or music albums, or on bill-boards, public places, buildings, conveyances, cell phones, automated teller machines, internet;

(ii) selling of time slots on radio or television by a person, other than a broadcasting agency or organization; and

(iii) aerial advertising

(Section 65(105)(zzzm) of Finance Act, 1994 as amended)

"Print media" *for the purpose of section 65 (105) (zzzm), means,-*

(i) "newspaper" as defined in sub-section (1) of section 1 of the Press and Registration of Books Act, 1867 (25 of 1867)

(ii) "book" as defined in sub section (1) of section 1 of the Press and Registration of Books Act, 1867 (25 of 1867) but does not include business directories, yellow pages, and trade catalogues which are primarily meant for commercial purposes.

(Section 65(105)(zzzm) of Finance Act, 1994 as amended)

***"Taxable service"** means any service provided or to be provided to any person, by any other person, in relation to sale of space or time for advertisement, in any manner; but does not include sale of space for advertisement in print media and sale of time slots by a broadcasting agency or organization.*

Explanation 1.- For the purpose of this sub-clause, "sale of space or time for advertisement" includes, -

(i) providing space or time, as the case may be, for display, advertising, showcasing of any product or service in video programmes, television programmes or motion pictures or music albums, or on bill boards, public places, buildings, conveyances, cell phones, automated teller machines, internet;

(ii) selling of time slots on radio or television by a person, other than a broadcasting agency or organization; and

(iii) aerial advertising

Explanation 2.- For the purposes of this sub-clause, "print media" means,-

(i) "newspaper" as defined in sub-section (1) of section 1 of the Press and Registration of Books Act, 1867 (25 of 1867);

(ii) "book" as defined in sub-section (1) of section 1 of the Press and Registration of Books Act, 1867 (25 0f 1867), but does not include business directories, yellow pages and trade catalogues which are primarily meant for commercial purposes.

(Section 65(105)(zzzm) of Finance Act, 1994 as amended)

Also, the Ministry has clarified vide M.F.(D.R.) letter D.O.F No 334/2006- TRU dated 28.02.2006 as below:

This entry levies service tax on sale of time or space for advertisement excluding sale of space for advertising in print media. Sale of advertising time in television and radio by any person other than broad costing agency or organization is also covered under this sub-clause. Some of the other modes of advertisement covered under this mode are internet advertisement, advertisement on buildings, vehicles etc., advertisement in motion pictures, television serials, video and music albums, mobile phones, ATMs, films and television serials (known as product placement). It may be noted that advertisement in print media is excluded.

15. It is also pertinent to refer the clarification issued by para 4 of F.No. 341/43/96-TRU dated 31.10.1996, which reproduced as below: " *It is further to be clarified that in relation to advertising agency, the service tax is to be computed on the gross amount charged by the advertising agency from the client for 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 the making or preparation of advertisement or gets it 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 the print media (i.e. newspapers, periodicals etc.) or the electronic media (Doordarshan, private TV channels, AIR etc.) 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"* . Hence the valuation of the advertisement agency service regarding printed media has been clarified according to which the service tax is payable on the commission received by the service receiver and not the entire consideration received from clients.

16. Thus on perusal of assessee's submissions & other docuements, I find that the assessee is getting commission from the broadcasting agency @15% of the total consideration. On perusal of the contentions of the assessee and considering Board"s letter dt.31.10.1996 and on perusal of veruous case laws cited by the assessee, I find that the assessee is liable to pay service tax on the said commission @ 15% of the total receipts on account of print media advertisement and the remaining 85 % is not taxable and accordingly assessee is not liable for payment of service tax on the entire amount receevied from service recivers.

17. Further, the said assessee, in their reply, submitted that service of sale of space in print mdeia is covered in Negative Lists of services as detailed in Section 66D(g) of Finance Act, 2012 and therefore the income of Rs.49,40,045/- for the year 2014-15 and Rs.4,38,833/- earned by the said assessee on account of sale of space in print media is exempted from the taxable service and accordingly not required to pay any service tax. With effect from 01.07.2012, the system of Negative List has been introduced according to which the servies covered under Negative list is not Taxable. The Section 66D introduced in the Finance Act, 1994 states that the negative list would be comprising of the following services, namely:

(a) Services by Government or a local authority
(b) Services by the Reserve Bank of India
(c) Services by a foreign diplomatic mission located in India
(d) Services relating to agriculture or agriculture produce
(e) Trading of goods
(f) Any process amounting to manufacture or production of goods
(g) Selling of space or time slots for advertisements
(h) Service by way of access to a road or a bridge on payment of toll charges
(i) Betting, gambling or lottery
(j) Admission to entertainment events or access to amusement facilities
(k) Transmission or distribution of electricity by an electricity transmission or distribution utility
(l) Services by way of education
(m) Services by way of renting of residential dwelling
(n) Services by way of extending deposits, loans etc.
(o) Service of transportation of passengers, with or without accompanied belongings
(p) Services by way of transportation of goods
(q) Funeral, burial, crematorium or mortuary services including transportation of the deceased

18. On perusal of the above Section 66D(g), I find that the services provide through Selling of space or time slots for advertisements are exempted from payment of service tax. On perusal of audited balance sheet and other related documents, I find that the assessee have an income of Rs.49,40,045/- for the eyar 2014-15 and Rs.4,38,833/- for the year 2016-17 from the category of print media sales which is rightly falls under the Negative list under 66D(g). Hence the said income of the assessee is rightly eligible for exemption from payment of service tax and therefore allowed as deductible.

20. The Balance sheet and profit and loss account of an assessee is vital statutory records. Such records are prepared in statutory format and reflect financial transactions, income and expenses and profit and loss incurred by company during a financial year. The said financial records are placed before different legal authorities for evincing true financial position. Assessee was legally obligated to maintain such records according to generally accepted accounting principles. They cannot keep it in unorganized method. The statute provides mechanism for supervision and monitoring of financial records. It is

mandate upon auditor to have access to all the bills, vouchers, books and accounts and statements of a company and also to call additional information required for verification and to arrive fair conclusion in respect of the balance sheet and profit and loss accounts. It is also onus upon auditor to verify and make a report on balance sheet and profit and loss accounts that such accounts are in the manner as provided by statute and give a true and fair view on the affairs. The Chartered Accountant, who audited the accounts of the assessee, being qualified professional has given declaration that the balance sheet and profit and loss accounts of the noticee reflect true and correct picture of the transaction and therefore, I have no option other than to accept the classification of income under profit and loss account as true nature of the business and to proceed to conclude instant proceedings accordingly.

21. On perusal of SCN and other documents, I find that SCN states that the total income credited under Section 194C, 194H, 194I and 194J to Rs.4,73,36,709/-, Rs.4,46,26,472/- and Rs.2,12,98,001/- for the years 2014-15, 2015-16 & 2016-17 respectively. The assessee in reply to SCN submitted copy of Form No. 26AS and copy of Balance Sheet/ Profit and Loss account for financial year 2015-16. The noticee in their books of accounts declared an income of Rs. 8,05,65,217/- , Rs.5,48,23,632/- and Rs.2,95,07,937/- for the years 2014-15, 2015-16 & 2016-17 respectively. The income declared is more than the income reflected under Form No. 26AS thereby, I accept the income declared by noticee in P&L Account as true and correct. On perusal of books of accounts including sales register, I find that the assessee has an income of Rs.7,49,53,633/- for the year 2014-15; Rs.5,84,90,812/- for the year 2015-16 and Rs.2,90,21,557/- for the eyar 2016-17 as income from print media sales. The assessee is liable to pay service tax on the said commission @ 15% and the remaining 85 % i.e.Rs.6,37,10,588/- for the year 2014-15, Rs.4,97,17,190/- for the year 2015-16 and Rs.2,46,68,323/- for the year 2016-17 is not taxable. For the sake of clarity the taxability of the said assessee is tabulated as under:

YEAR	2014-15	2015-16	2016-17
Sales as per Books of accounts	80565217	54823632	29507937
Less:Print media sales (85% value)	63710588	49717190	24668323
Difference	16854629	5106442	4839614
Less:Print media sales without commission	4940045	0	438833
Difference	11914584	5106442	4400781
Add:Discount	1698361	5472289	3300619
Differance	13612945	10578731	7701400
Assessable value as per ST 3	13612945	10605973	7701399
Difference	0	-27242	1

22. In view of the above discussion and findings and also on perusal of SCN, audited Balance Sheet for the year 2014-15, 2015-16 and 2016-17, ITR, 26AS, reconciliation statement as well as submissions made by the said assessee, I find that the assessee is eligible for deduction of 85% total income & print media sales without commission from their total income. In the circumstances, I find that the assessee has rightly fulfilled the obligation to pay service tax on their taxable income. Therefore the service tax demand of Rs.1,11,40,719/- demanded vide above referred SCN is not sustainable and accordingly Show Cause Notice dt.29.09.2020 is liable to be dropped.

Further, as the SCN itself is not sustainable there is no reason to charge interest or to impose penalty upon the said assessee on this count.

23. With regard to penalty proposed in charging para (iv), I find that the Service Tax returns for the period April 2014- September 2014 has been filed on 22.10.2014. Therefore, I do not propose any penalty under Rule 7C of Service Tax Rules, 1994.

24. In view of the above I pass the following order;

ORDER

25. I hereby order to drop the proceedings initiated for recovery of service tax of Rs.1,11,40,719/- along with interest and penalties vide SCN No. STC/15-86/OA/2020 dated 29.09.2020.

(R.GULZAR BEGUM)
Additional Commissioner
Central GST & Central Excise
Ahmedabad North

F.No. STC/15-86/OA/2020 Dated- 10.02.2022

To
M/s.Sharp Media Services,
Prop. Pinal Arvindbhai Shah,
Oxford Tower, SF 3 Nr. Gurukul Road,
Gurukul, Memnagar, Ahmedabad.

Copy to:
1. The Commissioner of CGST & C.Ex., Ahmedabad North.
2. The Deputy Commissioner Division-VII, Central Excise & CGST, Ahmedabad North.
3. The Superintendent, Range-II, Division-VII, Central Excise & CGST, Ahmedabad North
4. The Superintendent(system) CGST, Ahmedabad North for uploading on website.
5. Guard File