

**CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.**

COURT NO. II

Service Tax Appeal No.52034 of 2018 (SM)

[Arising out of Order-in-Appeal No.IND/EXCUS/000/APP-558-17-18 dated 30.01.2018 passed by Commissioner (Appeals), Customs, Central Goods & Service Tax & Central Excise, Indore (M.P.)]

M/s. Nai Dunia Media Pvt.Ltd.

60/1, Babu Labhachand,
Chajlani Marg,
Indore-452 002 (M.P.).

Appellant

VERSUS

**Commissioner of Central Goods &
Service Tax and Central Excise,**

Manik Bagh Palace,
Indore (M.P.).

Respondent

APPEARANCE:

Shri Ankur Upadhyay, Advocate for the appellant.
Ms. Tamanna Alam, Authorised Representative for the respondent.

CORAM:

HON'BLE SHRI ANIL CHOUDHARY, MEMBER (JUDICIAL)

FINAL ORDER NO.51042 / 2022

**DATE OF HEARING:31.05.2022
DATE OF DECISION:02.11.2022**

ANIL CHOUDHARY:

The appellant, M/s. Naidunia are publishers and printers of newspapers and are registered with the Service Tax Department for providing taxable service of renting of immovable property.

2. Under the same group/management, there are other companies viz. Webduniya.com Pvt. Ltd. and Print Pack Pvt. Ltd. All these are located in the same office building or factory premises. During Feb., 2013, the Department conducted audit, wherein it was observed that the appellant have entered into two agreements, first with Webdunia. Com India Ltd.

('webdunia' for short) and the second with Print Pack Pvt. Ltd. ("PPPL" for short). The first agreement dated 1.3.2000 is between Naidunia and Webdunia, *inter alia*, provides that Naidunia shall provide entire print materials published in its Hindi Daily 'Naidunia to Webdunia'. Naidunia shall also provide entire materials available with them in their library for reference and use to Webdunia. Naidunia shall also provide editorial facilities/services by offering one of their Editorial Staff, on free of cost basis, provide support of its network including undertaking of specific assignment to Webdunia and shall also provide space in its premises for 6 to 8 persons, subject to maximum of 800 sq. ft., without any charge. Further, Webdunia shall have exclusive right to use the contents and materials provided by Naidunia for development and deployment on its web portal. However, without prior written permission of Naidunia, they shall not provide the same to any other person. For the above mentioned services, M/s. Webdunia is paying service charges of Rs.30,000/- per month to Naidunia, which has been reflected in the Profit & Loss Account of Naidunia under the head "Service Charges".

3. There is another agreement between the appellant and Print Pack Pvt. Ltd. ('PPPL' for short) under the head 'Facilities Sharing Agreement'. Under this agreement, PPPL is allowed to use the premises (1850 sq.metres) of the appellant (Factory) to run the commercial printing machineries and amenities etc. within the factory premises at Rangwasa Industrial Area, Rau, of Naidunia. PPPL shall on day-to-day basis utilize certain facilities and amenities, which shall cover, but will not be limited to electricity and DG set and equipment, computer to plate setup (CPT), Fork lift, security services, canteen and toilet etc. and also utilize total area within its plant of about 1850 sq.mts. for installing the machinery at the factory complex of Naidunia. For these facilities, Naidunia is charging "facility sharing charges" from PPPL

under various heads like machine lease rent charges, rent charges, computer rent charges and facility share charges. AS per agreement, PPPL will pay Rs.2,25,000/- as a monthly compensation, all inclusive as consideration for the facilities (including electricity) provided by Naidunia.

4. Thus, it appeared that the appellant – Naidunia is providing services to Webdunia and PPPL and getting income under various heads, but they are paying service tax only under the head 'Renting of Immovable Property Service'. They are not paying service tax on income received from PPPL and Webdunia, which appropriately falls under the head "Business Support Service". Thus, it appeared that the appellant have short paid tax for the period 2007-2008 to 2011-2012. It further appeared that threshold exemption claimed by the appellant under notification no.6/2005-ST is not available to them, as the total aggregate value of all taxable services provided by them during the year 2006-2007 comes to Rs.12.77 lakhs, which is beyond the exemption limit. Thus, invoking the extended period of limitation, show cause notice dated 18.04.2013 was issued demanding service tax of Rs.25,23,887/- along with interest and further, penalties were proposed. The show cause notice was adjudicated on contest and an amount of Rs.24,27,798/- was confirmed, dropping the demand of Rs.96,089/- attributable to value of shares given by Webdunia to the appellant. Further, penalty under Section 78 was imposed. Penalty of Rs.10,000/- under Section 77 of the Finance Act was also imposed.

5. Being aggrieved, the appellant preferred appeal before the Id. Commissioner (Appeals), who vide impugned order-in-appeal was pleased to set aside the demand for the financial year 2007-2008 as time barred. Regarding facility charges received by the appellant, it had been urged that the total amount received Rs.1,73,50,000/- during the period 2008-2009 to 2011-2012 as per Profit & Loss Account, is basically sharing of electricity

charges or reimbursement of proportional electricity expenses to the appellant as electric supply meter is in the name of this appellant. On the basis of the sub-meter, the electricity bill is bifurcated between the various entities under the same management. Thus, there is no element of service involved. Electricity is goods chargeable to central excise under CETA. The appellant has also urged that extended period of limitation is not invocable, as all transactions are properly recorded in the books of accounts maintained in the normal course of business. The issue is wholly interpretational and hence, extended period is not invocable. The appellant has also contested the imposition of penalty. Ld. Commissioner (Appeals) framed the following issues:-

- (i) Whether the facility sharing charges amounting to Rs.1,73,50,000/- are reimbursement of electricity expenses and not includible in the taxable value.
- (ii) Whether the appellant is correct in submitting that suppression would not be there if the demand is raised on the basis of the balance sheet and penalty under Section 77 and 78 is not imposable.

6. Ld. Commissioner (Appeals) found that electricity charges are part of facility sharing charges as per the agreement. Further observed that – there was fixed charge per month for sharing all the facilities except electricity charges, which being variable as per usage were charged separately. But still it remained part of facility sharing agreement. Accordingly, held that the recovery /reimbursement of electricity charges would be part of provision of service. He also rejected the contention that recovery of electricity charges/facilitation charges is by way of a 'pure agent', observing that – I find that here the appellant paid the amount of electricity consumption on the basis of the bill generated by Madhya Pradesh

Electricity Board. The appellant in the name of the facility sharing also shared the electricity with M/s. Web Dunia and M/s. PPPL. Thus, here the case is not that the appellant acted on behalf of their tenant and paid the electricity charges to third party. Rather the electricity meter is in the name of the appellant and electricity bill is generated in their name, so they are holding the title of this service in their name. Further, observed that the appellant is providing "Renting of Immovable Property Service" along with "Facility Sharing Service".

7. Assailing the demand, the appellant urges that there is no dispute about the fact that the appellant have shared the electricity received from MPEB with Web Dunia, PPPL and others on proportionate (reimbursement) basis. Admittedly, the appellant has not generated electricity. Further, electricity is goods and not a service. Thus, the same is outside the scope of service tax. The appellant placed reliance on the following rulings:-

- (1) South Eastern Coal Fields Ltd. – 2019 (22) GSTL 393 (T-Delhi)
- (2) Logix Soft Tel Pvt. Ltd. – 2019 (20) GSTL 545 (T-All.)
- (3) Kiran Gems Pvt. Ltd. – 2019 (25)GSTL 62 (T-Ahmd.)

8. Ld. Authorised Representative relies on the findings of the court below.

9. Having considered the rival contentions, I hold that the appellant is not liable to service tax on the amount received as facility charges amounting to Rs.1,73,50,000/- as the same is wholly attributable to electricity expenses, which has been shared proportionately by the appellant and its sister concerns.

10. The next issue in this appeal is regarding taxability of the service charges under the head "Business Support Service" received from Webdunia.

11. Ld. Counsel for the appellant urges that the appellant have only provided a cess and use of all the news materials already available with them and have not provided any service in the nature of "Business support Service". Admittedly, editorial facilities have been provided free of charges and for use of their office space, no charge or rent is fixed. Thus, the amount received of Rs.30,000/- per month from Webdunia is not classifiable under the head "Business Support Service".

12. Ld. Authorised Representative relies on the findings of the impugned order.

13. Having considered the rival contentions, I find that both Webdunia, PPPL and Naidunia (appellant) are under the same management. Thus, there is element of mutuality in sharing of facility and the available news library. Accordingly, I hold that the said receipt is not chargeable to tax (of Rs.30,000/- p.m.) under the head "Business Support Service". I further find in the facts and circumstances that the appellant have maintained proper records of their transactions and receipts. Thus, the issue and demand in dispute is wholly interpretational in nature or by way of change of opinion. Admittedly, the appellant is registered with the Department and have regularly filed the returns and deposited the admitted tax. Accordingly, I hold that show cause notice is bad for invoking the extended period of limitation.

14. Accordingly, the appeal is allowed and the impugned order is set aside. All penalties imposed are set aside. The appellant shall be entitled to consequential benefits in accordance with law. Appeal allowed.

[order pronounced on 02.11.2022]

(ANIL CHOUDHARY)
MEMBER (JUDICIAL)