

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Zonal Bench At Ahmedabad**

REGIONAL BENCH- COURT NO.3

SERVICE TAX APPEAL NO. 443 OF 2012

(Arising out of OIA-70/2012/STC/KANPAZHAKAN/COMMR-A-/AHD dated 01.03.2012
passed by Commissioner of Service Tax-SERVICE TAX - AHMEDABAD)

CITY GOLD MEDIA PVT LTD

.....Appellant

2ND FLOOR, SARTHIK ANNEXE,
NEAR FUN REPUBLIC, S G ROAD,
AHMEDABAD-GUJARAT

VERSUS

C.S.T. SERVICE TAX-AHMEDABAD

....Respondent

7 TH FLOOR, CENTRAL EXCISE BHAWAN, NR. POLYTECHNIC
CENTRAL EXCISE BHAVAN, AMBAWADI,
AHMEDABAD, GUJARAT-380015

APPEARANCE:

None appeared for the Appellant

Shri. Tara Prakash (Authorized Representative) for the Respondent

CORAM:

**HON'BLE MEMBER (JUDICIAL), MR. RAMESH NAIR
HON'BLE MEMBER (TECHNICAL), MR. RAJU**

Final Order No. A/ 11342 /2022

DATE OF HEARING: 27.10.2022
DATE OF DECISION: 03.11.2022

RAMESH NAIR

The brief facts of the case are that on intelligence gathered by the departmental authorities revealed that the appellant were engaged in providing taxable services of 'Sale of Space and Time for Advertisement' but they were neither registered with service tax department nor they were paying service tax and were also not filing service tax returns. On search of the appellant premises conducted on 14.02.2007, it was found that the appellant were engaged in providing the services of Sale of Space and Time for Advertisement. Accordingly, the show cause notice was issued for demanding service tax. The show cause notice was adjudicated vide order in original dated 22.09.2011, whereby the service tax of Rs. 1,40,190/- was confirmed, demanded interest under section 75 of the Finance Act, imposed penalty under Section 76 and also imposed penalty under Section 77 and 78. Being aggrieved by the order in original, the appellant filed

appeal before Commissioner (Appeals) who has upheld the entire order-in-original and rejected the appeal. Therefore, the present appeal filed by the appellant.

2. When the matter was called out none appeared on behalf of the appellant despite the notice dated 23.09.2022, therefore the appeal is taken up for disposal.

3. Shri Tara Prakash, learned Assistant Commissioner (Authorized Representative) reiterates the findings of the impugned order.

4. We have carefully considered the submissions made by learned Authorized Representative and perused the records. We find that as per the Commissioner (Appeals) order, it is recorded that the appellant accepted the liability and not contesting the same. The relevant para 10 is reproduced below:

“10. I have gone through the entire case record including the written as well as oral submissions made by the Applicant in this regard. After going through the entire case, I find that the **appellant accepts liability to pay Service tax of Rs. 1,40,190/- along with applicable interest** thereof and has not contested the taxability of the service rendered by them. From the nature of service rendered by the Appellant, I find that the service are appropriately classifiable under the taxable service “Sale of Space or Time for Advertisement”. Accordingly, I uphold the confirmation of demand of Service tax in the impugned order.”

From the above, it is clear that the appellant have not disputed the tax liability along with applicable interest. In this position, the issue to be decided before us is only penalties imposed under Section 76, 77 and 78.

5. As regards the penalty under Section 76, the simultaneous penalty is not imposable as settled by the Hon’ble Gujarat High Court in the case of Raval Trading Company **2016 (42) STR 210-(Guj.)**, therefore, the penalty imposed under Section 76 is not sustainable. Hence, the same is set aside.

6/ As regard, the penalty under Section 77 and 78, we find that the entire case was made out on the search conducted by the departmental officer in the premises of the appellant, the appellant have never disclosed their activity before the department, therefore, they suppressed the fact from the department accordingly, the penalty under section 77 and 78 were rightly imposed. Therefore, we uphold the penalty imposed under Section 77 and 78. As per the above discussion, the appeal is partly allowed in above terms.

(Pronounced in the open court on 03.11.2022)

(RAMESH NAIR)
MEMBER (JUDICIAL)

(RAJU)
MEMBER (TECHNICAL)

Neha