

**IN THE CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL, CHENNAI**

Service Tax Appeal No. 40591 of 2016

(Arising out of Order in Appeal No. 454/2015 (STA – II) dated 31.12.2015 passed by the Commissioner of Service Tax (Appeals – II), Chennai)

Chennai Citi Centre Holdings Pvt. Ltd. **Appellant**

4th Floor, Chennai Citi Centre Mall
No. 10 – 11, Dr. Radhakrishnan Salai
Chennai – 600 004.

Vs.

Commissioner of GST & Central Excise **Respondent**

Chennai South Commissionerate
MHU Complex, 692, Anna Salai
Nandanam, Chennai – 600 035.

APPEARANCE:

Ms. Natasha Jhaver, Chartered Accountant for the Appellant
Shri N. Satyanarayanan, Authorised Representative for the Respondent

CORAM

Hon'ble Shri M. Ajit Kumar, Member (Technical)
Hon'ble Shri Ajayan T.V., Member (Judicial)

FINAL ORDER NO. 41456/2025

Date of Hearing: 16.07.2025
Date of Decision: 10.12.2025

Per M. Ajit Kumar,

This appeal is filed by the appellant against Order in Appeal No.454/2015 (STA – II) dated 31.12.2015 passed by the Commissioner of Service Tax (Appeals – II), Chennai. (impugned order).

2. Brief facts of the case are that the appellant has rented out their property for shops, offices, restaurants and food plazas and are registered for providing 'Renting of Immovable Property Service'. They have entered into an agreement with M/s. Noel Media & Advertising Pvt. Ltd. granting rights to display advertisements in the entire Citi

Centre Mall for which the appellant received 40% to 50% of the charges collected by M/s. Noel for allowing advertisements. But the appellant has not paid service tax even though the same allegedly attracted service tax under 'Sale or Space or Time for Advertisement' Service vide section 65(105)(zzzm) of the Finance Act, 1994. Hence Show Cause Notice No. 264/2013 dated 30.9.2013 was issued to the appellant for recovery of service tax amount of Rs.23,06,536/- for providing the above service for the period from April 2008 to March 2012. After due process of law, the Ld. Adjudicating Authority confirmed the demand of Rs.23,06,536/- along with interest and imposed equal penalty under sec. 78 of the Act. A separate penalty of Rs.10,000/- was imposed on the appellant under sec. 77 of the Finance Act, 1994. In appeal, the Commissioner (Appeals), upheld the adjudication order. Hence the present appeal.

3. The Ld. Chartered Accountant Ms. Natasha Jhaver appeared for the appellant and Shri N. Satyanarayanan, Ld. Authorized Representative appeared for the respondent.

3.1 The Ld. C.A. Ms. Natasha Jhaver submitted that the appellant had entered a MOU with M/s. Noel Outdoor to exploit the advertisement potential of the Citicentre mall owned by the appellant. The MOU sets out the responsibilities of both the parties and the revenue share of each party. M/s. Noel Outdoor would provide advertising services to various parties and claim consideration for the same and also pay appropriate service tax thereon. The total amount collected by them would be shared between the appellant and Noel Outdoor in agreed proportion and the service tax has been confirmed on the appellant for the revenue share received by them. The Ld. C.A. relied on the MOU

and submitted that they have not provided any sale of space or time for advertisement service, as envisaged in the definition. Such service is provided only by M/s. Noel Outdoor. She relied on CBEC's Circular dated 23.02.2009, to stress that the activity was on a collaboration basis and was hence not exigible to service Tax. The Ld. C.A. also pointed out certain quantification errors in the Show Cause Notice. She further submitted that the demand of service tax on the amount not realized is not sustainable in view of the provisions of Rule 6 of the Service Tax Rules, 1994/ Point of Taxation Rules, 2011. She stated that the demand up to September 2011 is also hit by time bar since the conduct of the appellant was guided by the CBEC Circulars.

3.2 Shri N. Satyanarayanan, Ld. Authorized Representative reiterated the findings in the impugned order.

4. The submissions of both the parties have been considered and the material on record has been perused. The dispute center around an MOU between the appellant and Noel Outdoor, Chennai, on the subject: **Chennai City Center – Advertising Rights of entire mall to Noel Outdoor.**

5. An MOU that is enforceable in a court of law is a contract. The Hon'ble Apex Court in **DLF Universal Ltd. & Anr. Vs Director, Town, and Country Planning Department, Haryana & Ors.** [(2010) 14 SCC 1], stated the principle involved in the interpretation of contracts:

"Interpretation of contract

13. **It is a settled principle in law that a contract is interpreted according to its purpose. The purpose of a contract is the interests, objectives, values, policy that the contract is designed to actualize.** It comprises the joint intent of the parties. Every such contract expresses the autonomy of the contractual parties' private will. It creates reasonable, legally protected expectations between the parties and reliance on its results. Consistent with the

character of purposive interpretation, the court is required to determine the ultimate purpose of a contract primarily by the joint intent of the parties at the time the contract so formed. **It is not the intent of a single party; it is the joint intent of both the parties and the joint intent of the parties is to be discovered from the entirety of the contract and the circumstances surrounding its formation.”**

(emphasis added)

6. Before examining the MOU it may also be relevant to extract the portion of the judgment of the Hon'ble Gauhati High Court in the case of **Magus Construction Pvt. Ltd. Vs Union of India** [2008 (11) S.T.R. 225 (Gau.)] on what constitutes a 'service' and 'service provider'.

"29. In the light of the various statutory definitions of "service", one can safely define "service" as an act of helpful activity, an act of doing something useful, rendering assistance or help. Service does not involve supply of goods; "service" rather connotes transformation of use/user of goods as a result of voluntary intervention of "service provider" and is an intangible commodity in the form of human effort. **To have "service", there must be a "service provider" rendering services to some other person(s), who shall be recipient of such "service".**

30. Under the Finance Act, 1994, "service tax" is levied on "taxable service" only and not on "service provider". A "service provider" is only a means for deposit of the "service tax" to the credit of the Central Government. **Although the term "service receiver" has not been defined in the Finance Act, 1994, the "service receiver" is a person, who receives or avails the services provided by a "service provider".**

31. From the provisions of the law extracted hereinabove, it becomes abundantly clear that the burden of registration and payment of "service tax" is on the person, who provides "taxable service" to any person. According to the petitioner-company, it does not provide any "taxable service" to any person so as to warrant its registration under the Finance Act, 1994, and/or to pay any "service tax" thereunder. Any part of constructional activity for construction of building, which is carried out by the petitioner-company, is not a "service" rendered to any one, but an activity, which is carried out by the petitioner-company, for its own self. **Since the very concept of rendering of "service" implies two entities, one, who renders the "service",**

and the other, who is recipient thereof, it becomes transparent that an activity carried on by a person for himself or for his own benefit, cannot be termed as "service" rendered."

(emphasis added)

7. We proceed to examine the issue guided by the judgment of the Constitutional Courts above. We find from the MOU that it involves revenue sharing and the obligation of each party has been listed out. Relevant portions of the MOU are listed below:

Terms & Conditions:-

- a. Noel Outdoor be given a grace period of eight (8) months from the date of MOU where the gross revenue be split 80% to Noel Outdoor and 40% to Citi Centre.
- b. For the duration of the advertising period after this initial eight (8) month grace period from the date of the MOU the revenue shall be split 50% between each of the aforementioned parties.

II. Particulars

...

- d) Revenue shall be calculated on the total monthly incoming advertising revenue and Noel Outdoor will maintain a minimum guarantee of 60% occupancy level at any point of time or compensate the Citi Center on this basis irrespective of the actual level of occupancy.

III. Noel Outdoor's responsibilities under this MOU.

- 1. Noel Outdoor is responsible for the entire investment required for all advertising products, signages, displays and similar products
- 2. Noel Outdoor is responsible for marketing the display units
- 3. Noel Outdoor is responsible for the total installation of the advertising products in a manner which does not affect the ambience of the Mall
- 4. Noel Outdoor is responsible for the maintenance of the advertising products
- 5. It is Noel Outdoor's responsibility to collect the revenue from the advertising clients and ensure this is

swiftly deposited into the bank where the funds can be appropriately transferred.

III. Citi Centre's responsibilities under this MOU

1. Citi Centre provides Noel Outdoor with access to the centre to install the display units.
2. Citi Centre provides Noel Outdoor with access to the centre to maintain the display units.
3. Citi Centre provides Noel Outdoor with access to the centre to exhibit display units to clients at such locations as may be agreed by Citi Centre
4. Citi Centre provides the unobtrusive, necessary space required to display the advertising products to Noel Outdoor. It is Citi Centre's sole right to decide which sites may be available as advertising space.
5. Citi Centre provides the necessary electricity required to Noel Outdoor, for the operation of the display units, , this clause (III (5)) shall be re-negotiated after three (3) months of the agreement has been concluded

If any disputes regarding either parties rights or responsibilities under this document should arise, and the parties are unable to arrive at a mutual resolution through their own means of discussion an independent arbitrator for each party should be appointed to mediate between the parties in a non-biased, equitable manner. In this process at arriving at a dispute resolution both parties are free to participate and contribute in the mediated discussions.

In case any disputes or differences still rest between the parties, the same shall be resolved through Arbitrators as per the provision of Arbitration & Conciliation Act, 1996.”

- d. Revenue shall be calculated on the total monthly incoming advertising revenue and Noel Outdoor will maintain a minimum guarantee of 80% occupancy level at any point of time or compensate the Citi Centre on this basis irrespective of the actual level of occupancy.

From the MOU it is seen that both parties undertake responsibilities jointly towards the successful implementation of the scheme for their mutual interest and benefit. The amount received by the appellant is not fixed and depends upon the gross revenue earned. Such an agreement is not between two principals but are in the nature of self

service to maximize the profit and thus increase their own individual share of the same, on a percentage basis. No payment is made by one to the other for a specific activity. One party does not provide a service to the other and both have their own areas of rights and responsibility for this joint working of the MOU. Hence there is no "service receiver" / "service provider" relationship between the entities. The minimum amount guaranteed to the appellant does not take away from the fact that the joint intent of both the parties to the MOU is to work together for mutual benefit. Hence in terms of the judgment in the case of

Magus Construction (supra), an activity carried on by a person for himself or for his own benefit, cannot be termed as "service rendered."

8. A similar issue relating to self-service on a revenue sharing basis between a distributor/producer and an exhibitor of films came up for consideration before a Coordinate Bench of this Tribunal at Allahabad,

in **M/s. PVS Multiplex India Pvt. Ltd. Vs Commissioner of Central Excise, Meerut-I** [2017 (11) TMI-156-CESTAT Allahabad]. The Bench decided that the activity was not taxable and hence the appellant was not liable to pay service tax on the payments made to the distributors

for screening the films. A similar matter in the case of **M/s. Inox Leisure Ltd. Versus Commissioner of GST and Central Excise – Mumbai** [2022 (5) TMI 1397 - CESTAT MUMBAI], was decided by the

Mumbai Bench of this Tribunal after taking into consideration the Tribunals judgment in **PVS Multiplex** (supra), among others, in favour of the appellant. The Honble Supreme Court in **COMMISSIONER OF SERVICE TAX Vs INOX LEISURE LTD.** [2022 (61) G.S.T.L. 342 (S.C.)], dismissed revenue's appeal while stating, "The CESTAT has

taken an absolutely correct view, to which we agree."

9. We are hence of the opinion that the activity of the appellant as per the MOU cited above would not be exigible to Service Tax. The impugned order is hence set aside on merits. The appellant is eligible for consequential relief as per law. The appeal is disposed of accordingly.

(Order pronounced in open court on 10.12.2025)

(AJAYAN T.V.)
Member (Judicial)

(M. AJIT KUMAR)
Member (Technical)

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