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**GOVERNMENT OF INDIA
MINISTRY OF FINANCE
DEPARTMENT OF REVENUE**

**Office of the Principal Commissioner RA and
Ex-Officio Additional Secretary to the Government of India**
8th Floor, World Trade Centre, Cuffe Parade,
Mumbai- 400 005

F. NO. 196/01/WZ/18-RA / 1883

Date of Issue: 13.05.2022

ORDER NO. 49 /2022-ST (WZ) /ASRA/MUMBAI DATED 12.05.2022 OF THE GOVERNMENT OF INDIA PASSED BY SHRI SHRAWAN KUMAR, PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO THE GOVERNMENT OF INDIA, UNDER SECTION 35EE OF THE CENTRAL EXCISE ACT, 1944.

Applicant : M/s People Interactive (India) Pvt. Limited,
205, Shiv-e-Numh, Dr. Annie Besant Road,
Worli, Mumbai – 400 018.

Respondent : Commissioner of CGST & Central Excise,
Mumbai Central Commissionerate.

Subject : Revision Application filed under Section 35EE of the Central Excise Act, 1944 against the Order-in-Appeal No.PK/45/ML/2017 dated 31.07.2017 passed by the Commissioner (Appeals) - II, CGST & Central Excise, Mumbai.

ORDER

The subject Revision Application has been filed by M/s People Interactive Pvt. Limited (here-in-after referred to as 'the applicant') against the impugned Order-in-Appeal dated 31.07.2017 passed by the Commissioner (Appeals) – II, CGST & Central Excise, Mumbai. The said Order-in-Appeal disposed of an appeal against Order-in-Original dated 25.08.2014 passed by the Assistant Commissioner having jurisdiction of erstwhile Division – II, Service Tax – I, Mumbai, which in turn decided a Show Cause Notice dated 04.05.2012 issued to the applicant.

2. Brief facts of the case are that the applicant, as a networking partner, had received remuneration from M/s Google Ireland, situated at Ireland, for providing space or time for ads on their websites and had not paid service tax on the same as they considered the same as 'export of service'. Show Cause cum Demand Notice dated 04.05.2012 was issued to the applicant demanding Service Tax of Rs.1,73,362/- on the said Sale of Space or Time for Advertisement Services (SSTAS) provided by the applicant. The amount demanded was paid by the applicant during the course of investigation. The said Show Cause Notice was decided vide Order-in-Original dated 22.08.2014 wherein the demand raised was confirmed and the amounts of Rs.1,73,362/- and Rs.21,191/- paid by the applicant towards Service Tax and Interest, respectively, was appropriated. The Adjudicating Authority also imposed penalty of Rs.1,73,362/- and Rs.5,000/- under Section 78 and 77 of the Finance Act, 1994, on the applicant.

3. Aggrieved by the imposition of penalties, the applicant filed an appeal before the Commissioner (Appeals) on the grounds that there was no mens-rea on their part and sought relief to that extent. The same was rejected vide Order-in-Appeal dated 31.07.2017. Aggrieved, the applicant has filed the subject Revision Application praying for the Order-in-Appeal to be set aside on the grounds that the imposition of penalty by the original Adjudicating Authority was completely erroneous, unjustified and bad in law. The applicant has submitted elaborate grounds on which such prayer has been made.

4. Personal hearing in the matter was granted to the applicant on 23.02.2022. In response to the same, Shri R.S. Samria, Partner, Samria & Co., Chartered Accountants, vide letter dated 18.02.2022, acting on behalf of the applicant, informed that they had settled the instant case under the Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019. They submitted copy of the SVLDRS-1 and SVLDRS-4 issued by the Department in this connection and sought closure of the instant case.

5. Government has carefully gone through the relevant records available in case file, the written submissions and also perused the relevant Order-in-Original and the impugned Order-in-Appeal.

6. Government observes that that the dispute in the present case is regarding imposition of penalties under Section 77 & 78 of the Finance Act, 1994 which stemmed from the applicant having failed to pay Service Tax. As stated above, the *lis* before the Commissioner (Appeals) was limited to deciding the legality of the penalties imposed by the original Adjudicating Authority and the Commissioner (Appeals) vide impugned Order-in-Appeal upheld the decision of the original Adjudicating Authority, which has now been challenged in the instant Revision Application. Government notes that at this juncture it is pertinent to examine Section 35EE and Section 35B of the Finance Act, 1994, which provide for Revision by the Central Government and specifies the nature of cases that would lie before the Central Government, respectively. Relevant portions of the same are reproduced below:-

(i) Section 35EE - Revision by Central Government -

*(1) The Central Government may, on the application of any person aggrieved by any order passed under section 35A, where the order is of the nature referred to in the **first proviso to sub-section (1) of section 35B**, annul or modify such order :*

[Provided that the Central Government may in its discretion, refuse to admit an application in respect of an order where the amount of duty or fine or penalty, determined by such order does not exceed five thousand rupees.]...

(ii) Section 35B - Appeals to the Appellate Tribunal

(1) Any person aggrieved by any of the following orders may appeal to the Appellate Tribunal against such order -

(a) a decision or order passed by the ¹[Principal Commissioner of Central Excise or Commissioner of Central Excise] as an adjudicating authority;

(b) an order passed by the ²[Commissioner (Appeals)] under section 35A;

....

... [Provided that no appeal shall lie to the Appellate Tribunal and the Appellate Tribunal shall not have jurisdiction to decide any appeal in respect of any order referred to in clause (b) if such order relates to, -

(a) a case of loss of goods, where the loss occurs in transit from a factory to a warehouse or to another factory, or from one warehouse to another, or during the course of processing of the goods in a warehouse or in storage, whether in a factory or in a warehouse;

(b) a rebate of duty of excise on goods exported to any country or territory outside India or on excisable materials used in the manufacture of goods which are exported to any country or territory outside India;

(c) goods exported outside India (except to Nepal or Bhutan) without payment of duty;

(d) credit of any duty allowed to be utilised towards payment of excise duty on final products under the provisions of this Act or the rules made thereunder and such order is passed by the Commissioner (Appeals) on or after the date appointed under section 109 of the Finance (No. 2) Act, 1998:

[emphasis supplied]

On examining the first proviso to Section 35B of the Finance Act, 1994, Government notes that it does not include cases relating to 'non-payment of Service Tax'. As discussed above, the instant issue is a dispute that stems from non-payment of Service Tax by the applicant on service provided by them and the penalties imposed on them as a consequence thereof. Government notes that this issue is not covered under the clauses (a) to (d) of the first proviso to Section 35B of the Finance Act, 1994. Thus, Government finds that in terms of Section 35B and Section 35EE of the

Finance Act, 1994, it does not have jurisdiction over the dispute involved in the present *lis*.

7. In view of the above, Government refrains from delving into the submissions made by the applicant and dismisses the subject Revision Application as the same is non-maintainable due to lack of jurisdiction.


(SHRAWAN KUMAR)

Principal Commissioner & Ex-Officio
Additional Secretary to Government of India

ORDER No. ~~49~~ /2022-ST (WZ) /ASRA/Mumbai dated 2.05.2022

To

M/s People Interactive (India) Pvt. Limited,
205, Shiv-e-Numh, Dr. Annie Besant Road,
Worli, Mumbai - 400 018.

Copy to:

1. The Commissioner of CGST & Central Excise, Mumbai Central Commissionerate.
2. Commissioner (Appeals)-II, CGST & Central Tax, Mumbai.
3. Sr. P.S. to AS (RA), Mumbai.
4. Guard File
5. Notice Board.