प्रधान आयुक्त का कार्यालय, केन्द्रीय जी.एस.टी ,अहमदाबाद – दक्षिण
७वी मंजिल, जी.एस.टी भवन ,पोलिटेकनिक के पास ,आंबावाडी ,अहमदाबाद -१५
OFFICE OF THE PRINCIPAL COMMISSIONER OF CENTRAL GST, AHMEDABAD-SOUTH
7th FLOOR, GST BHAVAN, NR. POLYTECHNIC, AMBAVADI, AHMEDABAD-380015

निबन्धित पावती डाक द्वारा / By REGISTERED POST A.D.

फा. सं./ F.No. STC/4-79/ O&A/2015-16

आदेश की तारीख/Date of Order : 16-02-2018

जारी करने की तारीख/Date of Issue : 16-02-2018

द्वारा पारित/Passed by:- वि. के. वर्मा, प्रधान आयुक्त

V. K. VERMA, PRINCIPAL COMMISSIONER

मूल आदेश संख्या / Order-In-Original No. : AHM-EXCUS-001-COM-013-17-18 Dated 16-02-2018

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

2. इस आदेश से असंतुष्ट कोई भी व्यक्ति इस आदेश की प्राप्ति से तीन माह के भीतर सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण, अहमदाबाद पीठ को इस आदेश के विरुद्ध अपील कर सकता है। अपील सहायक रजिस्ट्रार, सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण, O-20, मेघाणीनगर, न्यु मेन्टल हॉस्पीटल कम्पाउन्ड, अहमदाबाद-380 016 को सम्बोधित होनी चाहिए।
Any person deeming himself aggrieved by this Order may appeal against this Order to the Customs, Excise and Service Tax Appellate Tribunal, Ahmedabad Bench within three months from the date of its communication. The appeal must be addressed to the Assistant Registrar, Customs, Excise and Service Tax Appellate Tribunal, O-20, Meghani Nagar, Mental Hospital Compound, Ahmedabad-380 016.

3. उक्त अपील प्रारुप सं. इ.ए.3 में दाखिल की जानी चाहिए। उसपर केन्द्रीय उत्पद शुल्क (अपील) नियमावली, 2001 के नियम 3 के उप नियम (2) में विनिर्दिष्ट व्यक्तियों द्वारा हस्ताक्षर किए जाएंगे। उक्त अपील को चार प्रतियों में दाखिल किया जाए तथा जिस आदेश के विरुद्ध अपील की गई हो, उसकी भी उतनी ही प्रतियाँ संलग्न की जाएँ (उनमें से कम से कम एक प्रति प्रमाणित होनी चाहिए)। अपील से सम्बंधित सभी दस्तावेज भी चार प्रतियों में अग्रेषित किए जाने चाहिए।
The Appeal should be filed in Form No. E.A.3. It shall be signed by the persons specified in sub-rule (2) of Rule 3 of the Central Excise (Appeals) Rules, 2001. It shall be filed in quadruplicate and shall be accompanied by an equal number of copies of the order appealed against (one of which at least shall be certified copy). All supporting documents of the appeal should be forwarded in quadruplicate.

4. अपील जिसमें तथ्यों का विवरण एवं अपील के आधार शामिल हैं, चार प्रतियों में दाखिल की जाएगी तथा उसके साथ जिस आदेश के विरुद्ध अपील की गई हो, उसकी भी उतनी ही प्रतियाँ संलगन की जाएंगी (उनमें से कम से कम एक प्रमाणित प्रति होगी)।
The Appeal including the statement of facts and the grounds of appeal shall be filed in quadruplicate and shall be accompanied by an equal number of copies of the order appealed against (one of which at least shall be a certified copy.)

5. अपील का प्रपत्र अंग्रेजी अथवा हिन्दी में होगा एवं इसे संक्षिप्त एवं किसी तर्क अथवा विवरण के बिना अपील के कारणों के स्पष्ट शीर्षों के अंतर्गत तैयार करना चाहिए एवं ऐसे कारणों को क्रमानुसार क्रमांकित करना चाहिए।
The form of appeal shall be in English or Hindi and should be set forth concisely and under distinct heads of the grounds of appeals without any argument or narrative and such grounds should be numbered consecutively.

6. अधिनियम की धारा 35 बी के उपबन्धों के अंतर्गत निर्धारित फीस जिस स्थान पर पीठ स्थित है, वहां के किसी भी राष्ट्रीयकृत बैंक की शाखा से न्यायाधिकरण की पीठ के सहायक रजिस्ट्रार के नाम पर रेखांकित माँग ड्राफ्ट के जरिए अदा की जाएगी तथा यह माँग ड्राफ्ट अपील के प्रपत्र के साथ संलग्न किया जाएगा।

The prescribed fee under the provisions of Section 35 B of the Act shall be paid through a crossed demand draft, in favour of the Assistant Registrar of the Bench of the Tribunal, of a branch of any Nationalized Bank located at the place where the Bench is situated and the demand draft shall be attached to the form of appeal.

7. इस आदेश के विरूद्ध सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण में शुल्क के 7.5% जहां शुल्क अथवा शुल्क एवं जुरमाना का विवाद है अथवा जुरमाना जहां शीर्फ जुरमाना के बारेमे विवाद है उसका भुकतान करके अपील की जा शकती है।

An appeal against this order shall lie before the Tribunal 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".

8. न्यायालय शुल्क अधिनियम, 1970 की अनुसूची-1, मद 6 के अंतर्गत निर्धारित किए अनुसार संलग्न किए गए आदेश की प्रति पर 1.00 रूपया का न्यायालय शुल्क टिकट लगा होना चाहिए।

The copy of this order attached therein should bear a court fee stamp of Rs. 1.00 as prescribed under Schedule 1, Item 6 of the Court Fees Act, 1970.

9. अपील पर भी रु. 4.00 का न्यायालय शुल्क टिकट लगा होना चाहिए।

Appeal should also bear a court fee stamp of Rs. 4.00.

विषयः –**Sub :** Show Cause Notice No. F.No. STC/4-79/O&A/2015-16 dated 10.03.2016 to M/s. Triton Communications Pvt. Ltd., B-907/908, Premium House, Gandhigram Station Road, Behind Natraj Cinema, Off. Ashram Road, Ahmedabad-380009.

BRIEF FACTS OF THE CASE

1. Briefly stated the facts of the case are that M/s. Triton Communications Pvt. Ltd. having registered business premises located at B-907/908, Premium House, Gandhigram Station Road, B/h. Natraj Cinema, off Ashram Road, Ahmedabad-380009, (*hereinafter referred to as "M/s. TCPL"*) are an Advertising Agency as defined under Section 65(3) of the Finance Act, 1994 (as amended), providing taxable service under the category of "Advertising Services". The said service, provided by M/s. TCPL, is not specified in the negative list of services as listed in Section 66D of the Finance Act, 1994. M/s. TCPL are registered with Service Tax having Service Tax Registration No. "AABCT 1560 A ST 004".

2. During the course of audit of records, it was noticed that M/s. TCPL was engaged in providing sale of time slots for advertising services. It was found that they purchased time slots from electronic media for which they got agency commission and sold the same slot of time to their clients who in turn used the slot for screening the advertisements.

3 It was further revealed that the electronic media raised bills to M/s. TCPL on the time slots sold to them and charged them Service Tax under the category of "Broadcasting services". M/s. TCPL further issued bills to their (M/s. TCPL's) clients for rendering advertising services. The bills issued by them included the gross value of broadcasting services and the Service Tax charged by the electronic media. Thus, M/s. TCPL collected full transaction value of advertising service fees including broadcasting agency charges as well as Service Tax on the said charges from their clients. However, M/s. TCPL have not deposited the Service Tax so collected to the Govt. exchequer.

4.1 In this connection, Section 65[15] of the Finance Act 1994, provides for definition of Broadcasting as under :-

> *"broadcasting" has the meaning assigned to it in clause (c) of section 2 of the Prasar Bharti (Broadcasting Corporation of India) Act, 1990 (25 of 1990) and also includes programme selection, scheduling or presentation of sound or visual matter on a radio or a television channel that is intended for public listening or viewing,*

as the case may be; and in the case of a broadcasting agency or organization, having its head office situated in any place outside India, includes the activity of selling of time slots or obtaining sponsorships for broadcasting of any programme or collecting the broadcasting charges or permitting the rights to receive any form of communication like sign, signal, writing, picture, image and sounds of all kinds by transmission of electro-magnetic waves through space or through cables, direct to home signals or by any other means to cable operator including multisystem operator or any other person on behalf of the said agency or organization, by its branch office or subsidiary or representative in India or any agent appointed in India or by any person who acts on its behalf in any manner"

4.2 Further, Section 65[16] of Finance Act 1994 provides that:-

"Broadcasting Agency/Organization means any agency or organization engaged in providing service in relation to broadcasting in any manner and, in the case of a broadcasting agency or organization, having its head office situated in any place outside India, includes its branch office or subsidiary or representative in India or any agent appointed in India or any person who acts on its behalf in any manner, engaged in the activity of selling of time slots for broadcasting of any programme or obtaining sponsorships for programme or collecting the broadcasting charges or permitting the rights to receive any form of communication like sign, signal, writing, picture, image and sounds of all kinds by transmission of electromagnetic waves through space or through cables, direct to home signals or by any other means to cable operator, including multisystem operator or any other person on behalf of the said agency or organization".

4.3 Taxable Service has been defined under Section 65(105) (zk) as:-

"any service provided or to be provided to any person by a broadcasting agency or organization in relation to broadcasting in any manner and, in the case of a broadcasting agency or

organization, having its head office, situated in any place outside India, includes services provided by its branch office or subsidiary or representative in India or any agent appointed in India or any person who acts on its behalf in any manner, engaged in the activity of selling of time slots for broadcasting of any programme or obtaining sponsorships for programme or collecting the broadcasting charges or permitting the rights to receive any form of communication like sign, signal, writing, picture, image and sounds of all kinds by transmission of electromagnetic waves through space or through cables, direct to home signals or by any other means to cable operator, including multisystem operator or any other person on behalf of the said agency or organization".

4.4 As per Section 67 of the Finance Act 1994, *"the gross amount received by broadcasting agency or organization is liable to Service Tax at the rate specified in section 66 of the Finance Act 1994".*

4.5 Although M/s. TCPL is neither a broadcasting agency nor has provided broadcasting services in the light of the aforesaid definitions, they have collected Service Tax on the broadcasting charges from their clients under the category of "Broadcasting Service". Therefore, it appeared that M/s. TCPL have contravened the provisions of Section 73A(2) of the Finance Act, 1994 in as much as they have collected Service Tax, which they are not required to collect from their clients and have failed to pay the amount so collected to the credit of the Central Government. The amount of Service Tax thus recovered by M/s. TCPL from their clients, is required to be recovered from them under Section 73A(3) of the Finance Act, 1994.

5. Therefore, a Show-Cause-Notice No. STC/4-148/O&A/2010-11 dated 24.10.2013, was issued to M/s. TCPL for recovery of Service Tax amounting to Rs. 5,74,98,622/- which they have collected from their clients but not deposited, as discussed supra during the period from 2008-09 to 2011-12. The said S.C.N. was adjudicated by Commissioner of Service Tax, Ahmedabad vide Order-in-Original No. AHM-SVTAX-000-COM-014-14-15 dated 07.08.2014. Thereafter, a periodical Show-Cause-

Notice No. STC/4-26/O&A/2013-14 dated 13.05.2014 was issued to M/s. TCPL for the subsequent period of 2012-13 in terms of Section 73(1A) of the Finance Act, 1994 seeking recovery of Service Tax amounting to Rs. 2,41,37,018/-, which was also adjudicated vide O.I.O. No. AHM-SVTAX-000-COM-003-15-16 dated 16.10.2015 by the Principal Commissioner of Service Tax, Ahmedabad. Thereafter, a periodical Show-Cause-Notice No. STC/4-33/O&A/2014-15 dated 19.12.2014 was issued to M/s. TCPL for the subsequent period of 2013-14 in terms of Section 73(1A) of the Finance Act, 1994 seeking recovery of Service Tax amounting to Rs. 2,86,37,440/-, which was also adjudicated vide O.I.O. No. AHM-SVTAX-000-COM-20-15-16 dated 10.02.2016 by the Principal Commissioner of Service Tax, Ahmedabad.

6. In order to ascertain whether similar practice was followed by M/s. TCPL during the year 2014-15, they were asked to provide details for further period from April-2014 to March-2015. Thus, on the basis of details provided by M/s. TCPL, vide letter dated 20.11.2015, it was revealed that they had collected Service Tax amounting to Rs. 2,73,62,112/- on Broadcasting charges involving taxable value of Rs. 22,13,76,309/- during the period of 2014-15 but did not deposit the same to the Government account.

7. Therefore, subsequent periodical Show-Cause-Notice No. STC/4-79/O&A/2015-16 dated 10.03.2016 was issued by the Principal Commissioner of Service Tax, Ahmedabad to M/s. TCPL for the subsequent period of 2014-15 in terms of Section 73(1A) of the Finance Act, 1994; calling upon them to show cause as to why:-

i. Service Tax of Rs. 2,73,62,112/-, collected by them on "Broadcasting charges", w.e.f. 01.07.2012, engaged in providing taxable services which are not falling under Negative List of services as defined under Section 66D of the Finance Act, 2012, from their clients during the period 2014-15 but not credited to the Central Government account, as required under Section 73A(2) of the Finance Act, 1994; should not be demanded/recovered from them under Section 73 A(3) read with Section 73(1) of the Finance Act, 1994;

ii. Interest as applicable, on the above amount of Service Tax of Rs. 2,73,62,112/-, should not be recovered from them for not making payment in time, under Section 73B read with Section 75 of the Finance Act, 1994;

iii. Penalty should not be imposed upon them under Section 76 of the Finance Act, 1994; for failure to make the payment of Service Tax payable by them, in stipulated time period.

iv. Penalty should not be imposed upon them under Section 77 of the Finance Act, 1994 for the failure to file correct prescribed S.T.-3 Return (Periodical Return) showing the correct value of taxable service.

DEFENCE REPLY

8. The assessee submitted their written reply dt. 11.07.2016, alongwith enclosures mentioned therein. They, interalia, submitted that :-

1. The S.C.N. is issued on the assumption that they have followed the same practice of not discharging Service Tax *on broadcasting* services. The facts and circumstances are assumed to be same as that of prior periods and accordingly the S.C.N. has been issued under Section 73(1A) of The Finance Act, 1994.

2. W.e.f. April. 2014, they have changed the methodology of charging Service *Tax* to its customers. Prior to April, 2014, they had charged Service Tax on broadcasting charges from its customers representing the same as "recovery of Service Tax charged by broadcasters". The customer was made *aware* that what is being charged is the Service Tax charged by the broadcaster *and* not charged by them.

3. Such Service Tax charged from the customers, would entirely be passed on to the broadcaster without availing any CENVAT credit of services utilized by the broadcaster. Accordingly, in such cases they merely acted as an agent of the broadcaster and recovered Service Tax on its behalf and passed on the same so as to enable the broadcaster to pay such Service Tax to the Government.

4. Their above practice was inviting objections from the Department's end by way of S.C.N.s, stating that they, despite not being a broadcasting agency, has charged and collected Service Tax from their customers on the broadcasting charges and accordingly in light of the provisions of Section 73A(2), the same has to be deposited to the credit of Central Government.

5. In order to avoid unnecessary litigation, they, w.e.f. April-2014, have changed the manner followed by them in relation to collection and deposit of Service Tax. They have charged Service Tax on the entire value of services provided by them, including the broadcasting services on principal to principal basis. Accordingly, they have charged Service Tax on the entire value and the same has already been deposited to the credit of Government. Further, they have availed CENVAT credit of the input service received from the broadcaster.

6. 1n view of the above mentioned change of practice by them, the facts involved in period covered by the present S.C.N. are different from the facts as prevailed in prior periods. The primary essence for a Notice to be a valid S.C.N. under Section 73(1A) is :- the facts and grounds relied upon in the subsequent period are same as prevailed in prior periods. They referred to provisions of Section 73 ibid.

7. For a S.C.N. to be valid u/S. 73(1A), the grounds and facts relied in the previous S.C.N. have to be the same. In the present case, the factual position has changed and thus the claim in the S.C.N. is not sustainable.

8. In order to avoid unnecessary litigation, they, with effect from 01.04.2014, have changed the practice of charging and collection of Service Tax. They have charged Service Tax on entire value of services rendered, including the cost of broadcasting services paid to the broadcaster. They submitted copy of sample invoice raised to their customer M/s. Adani Willmar Ltd., wherein, it can be seen that Service Tax has been charged on the entire value including the broadcasting charges and their brokerage. The parallel invoice of the broadcaster was also submitted.

9. The entire amount, charged as Service Tax, has been timely paid by them to the credit of the Government. Copy of Chartered Accountant's Certificate certifying that they have charged and paid Service Tax on entire value of service, was also submitted. They also submitted the relevant extract of the Service Tax liability Ledger, wherein it can be seen that they have treated the entire Service Tax collected as his personal liability and has not credited the same to broadcaster's account showing it as payable to broadcaster.

10. The demands for the past period has been raised on the ground that they have recovered Service Tax on broadcasting services provided and not paid to the Government. But in the present case, they have deposited the Tax on the entire amount. Accordingly, demand cannot sustain under Section 73A(2) as there are no monies which are collected and not paid to the Government.

11. The S.C.N. is issued relying on the reply submitted by them to Departmental enquiry. The Department, in order to ascertain whether similar practice is followed by them as followed *in* the past period, asked them to provide details vide letter F.No. SD-01/4-298/Triton/AR-II/10-11 dated 04.08.2015. In response to the letter, they, vide letter dated 20.11.2015, provided the revenue summary for the year 2014-15.

12. The Department, on the assumption that they have followed the same invoicing procedure *as* it did in the prior years, issued the current S.C.N.. Accordingly, they submitted that the allegation in the S.C.N. that they have violated the provisions of Section 73A(2), are entirely baseless in view of the change in invoicing pattern.

13. In the period covered under the present S.C.N., there is substantial change in the invoicing and manner of payment of Service Tax, therefore S.C.N. has been wrongly issued under Section 73(1A) and is liable to he dropped. No Service Tax demand arises even if there is no change in the Invoicing pattern by them.

14. In order to attract the provisions of Section 73A(2), the amount should be collected from any person as representing "Service Tax". There is absolutely no representation to the customer that the

amount is charged/collected as Service Tax. The amount would be collected as Service Tax to be charged by the broadcasters and not the Service Tax charged by them. Hence, provisions of Section 73A cannot be attracted at all.

15. The emphasis in sub-section (2) is on "the amount collected as representing *Service* Tax." The said sub-section essentially requires that the person, who has collected any amount as representing Service Tax, is required to pay such amount to the Government. This Section is of the nature of forfeiture. The Section is enacted to ensure that Service Tax fraudulently collected is not retained by the person who collected it, but is, instead remitted to the Central Government who may then take steps to restore the excess Tax collected to the person from whom the said Tax was collected.

16. In the present case, if there would have been no change in the invoicing pattern, they would have collected the Tax from the customers and remitted it to the broadcasters. In no case, the money collected, would be retained by them and nor is there any intention on their part to do so.

17. The amount of Tax, shown in the Invoice, at the best can be treated as recoupment of the taxes to be paid to the broadcasters; hence the same will not amount of collection of tax and hence will not attract the rigorous of provisions of Section 73A.

18. Accordingly, no Service Tax demand arises even if there is no change in the invoicing pattern by them.

19. For the period in dispute, Section 76 reads *as "Any* person liable to pay Service Tax in accordance with the provisions of Section 68 or the rules made under this Chapter, who fails to pay such Tax". Therefore, a bare reading of the provision itself makes it clear that the said penalty cannot be imposed on them, since they have already paid entire tax collected by them.

20. Further, Section 73A(2) applies in cases where the person is not liable to pay tax but has collected the same as representing "Service Tax". Accordingly, they submitted that in cases where Section 73A(2)

applies, no penalty u/S 76 can be levied.

21. Further, penalty under Section 77 for failure to file correct S.T.-3 return has been proposed on them. As mentioned above, they have correctly disclosed the Service Tax collected in the present case and the fact that the same has been paid, can be verified on perusal of the return. For the reasons already explained above, since the demand itself is not sustainable, no penalty can be imposed upon them.

22. The levy of any penalty under the provisions of Service Tax would be subject to the provisions of Section 80 of the Finance Act, 1994. Accordingly, the levy of penalty is discretionary and if the Officer is satisfied that there is a reasonable cause, the penalty can be waived.

23. Entire Service Tax liability has already been collected and paid to the credit of the Government, therefore the interest provision would not apply to the facts of the present case.

Adjudication of case of Service Tax :-

9. The present case file was re-assigned and transferred to this office from Service Tax Commissionerate vide letter F. No. IV/16-25/CCO/MW/2016-17 dt. 03.11.2016 issued by Chief Commissioner, C.Ex. & S.T., Ahmedabad zone, for adjudication. P. H. in the matter was held on 16.11.2016 before the then Commissioner. As per the version of the assessee in P. H., verification report was called for from the then Commissioner, S. T., Ahmedabad, on 23.11.2016.

10. Compliance report was received in the matter vide letter dt. 16.12.2016. A P. H. was held on 22-02-2017, in the matter. For verification of submission made by the assessee, a letter was issued to Jt. Commissioner, S. T., A'bad on 23.02.2017. No compliance was received in the matter. Meanwhile, w.e.f. 30.06.2017, Service Tax Commissionerate was extinct. Hence the matter is taken up for adjudication by this office.

11. A verification report was again called for from the JAC. JRS, vide their letter dt. 08.02.2018, submitted their verification report. Vide this

letter, copies of ST-3 returns for F.Y. 2014-15 were submitted along with report that the assesse has changed manner in relation to collection and deposit of Service Tax and started taking CENVAT credit of Service Tax paid by broadcasting service provider to them as input CENVAT credit and they started issuing invoices to their client, M/s. Adani Wilmar Ltd. and recovered Service Tax from client and paying the same under Advertising service.

PERSONAL HEARING :-

12. Due to transfer of earlier Commissioner who had heard the assessee, a fresh P. H. was held on 06.02.2018, in the matter. The authorized representative of the assessee submitted that in F. Y. 2014-15, i.e. for the period in dispute, their accounting method has been changed and there is no short payment of Service Tax. For the period under dispute, they were audited by the Department and no discrepancies have been noticed by Audit. They requested to drop the proceedings.

DISCUSSION AND FINDINGS

13. I have carefully gone through the case records, contents of Show Cause Notice, written submission of M/s. T.C.P.L. and record of personal hearing. Since the present S.C.N. is a periodical one and issued in the form of a statement in terms of Section 73(1A), I have also gone through the details of charges specified in the original S.C.N. F. No. STC/4-148/O&A/2010-11 dated 24.10.2013.

14. I find that the limited issue which requires determination in the case is whether M/s. TCPL had collected any Service Tax from their clients which they were otherwise not required to collect and yet not deposited to the credit of Central Government as specified under Section 73A(2), or otherwise?

15. The undisputed facts of the case are that M/s. TCPL was holding a valid Service Tax registration and has provided taxable services

(Advertising Services) in their capacity as an Advertisement Agency to their clients; that they have provided advertising consultancy services to their clients for which they were receiving commission/retainership fees from such clients, whereupon they were paying Service Tax; that after finalization of the advertisement schedule and slots, etc. with their clients, M/s. TCPL was placing orders with the concerned Broadcasting Agency to book time slots on various channels/electronic media, as required. Thus, in the whole transaction, as illustrated by them in their defence reply and during the personal hearing, M/s. TCPL acted as a conduit between their clients and the broadcasting agency. I find that the entire defence was built up by M/s. TCPL on a singular point that they are not providing any broadcasting services either to the broadcasting agency who transmit the advertisement matters or to their clients whose products are advertised and hence they are not liable to pay any Service Tax on broadcasting services. In fact, this point has never been disputed by the Department. On the contrary, the original S.C.N. specifically mentions that M/s. TCPL was not providing taxable services of the nature as specified under Section 65(105)(zk) i.e. broadcasting services nor they are qualified as a broadcasting agency as provided under Section 65(15) and Section 65(16) of the Finance Act, 1994. The only allegation contained in the present case is that M/s. TCPL have collected broadcasting charges along with its Service Tax component from their clients even when they are not qualified/required to do so, yet not deposited the same to the credit of the Central Government as required under Section 73A(2). To this aspect, I find no dispute from M/s. TCPL.

16. M/s. TCPL has, in fact, admitted that they have charged/collected the broadcasting charges from their clients, though in a fiduciary capacity, on behalf of the broadcasting agency. They claim to have done no wrong as the amount so collected was passed on to the broadcasting agency, whereupon the broadcasting agency has paid Service Tax. I find no substance in the arguments put forth by M/s. TCPL in this regard, as the issue of taxability of the services or their eligibility of being a broadcaster or payment of Service Tax by the broadcasting agency, etc. are all independent of the provisions of Section 73A. The provisions of Section 73A of the Finance Act, 1994; are enumerated below:-

"Section 73A: Service tax collected from any person to be deposited with Central Government.

(1) Any person who is liable to pay service tax under the provisions of this Chapter or the rules made thereunder, and has collected any amount in excess of the service tax assessed or determined and paid on any taxable service under the provisions of this Chapter or the rules made thereunder from the recipient of taxable service in any manner as representing service tax, shall forthwith pay the amount so collected to the credit of the Central Government.

(2) Where any person who has collected any amount, which is not required to be collected, from any other person, in any manner as representing service tax, such person shall forthwith pay the amount so collected to the credit of the Central Government.

(3) Where any amount is required to be paid to the credit of the Central Government under sub-section (1) or sub-section (2) and the same has not been so paid, the Central Excise Officer shall serve, on the person liable to pay such amount, a notice requiring him to show cause why the said amount, as specified in the notice, should not be paid by him to the credit of the Central Government." [emphasis provided]

17. I find that the aforesaid provisions of Section 73A(2) and the allegations made in the S.C.N. are in conformity with each other. Here, M/s. TCPL was not a broadcasting agency/organization and they have not provided any broadcasting services to their clients and hence they are not required to charge/collect Service Tax from their customers. However, they have charged and collected the Service Tax on the broadcasting charges from their clients. Therefore, in the light of the provisions of Section 73A(2), Service Tax so collected has to be deposited by M/s. TCPL to the credit of Central Government which they have admittedly not done. Therefore, I find that the demand has been correctly made under Section 73A(3) of the Act *ibid.*

17.1. Further, the provisions of Section 73B of the Finance Act, 1994; is as under:-

> *"Section 73B.* ***Interest on amount collected in excess****. — Where an amount has been collected in excess of the tax assessed or determined and paid for any taxable service under this Chapter or the rules made thereunder from the recipient of such service, the person who is liable to pay such amount as determined under sub-section (4) of section 73A, shall, in addition to the amount, be liable to pay interest at such rate not below ten per cent and not exceeding twenty-four per cent. per annum, as is for the time being fixed by the Central Government, by notification in the Official Gazette, from the first day of the month succeeding the month in which the amount ought to have been paid under this Chapter, but for the provisions contained in sub-section (4) of section 73A, till the date of payment of such amount."*

17.2. Therefore, I hold that M/s. TCPL is also liable to pay interest at the appropriate rates on the amount of Service Tax so collected from their clients but not deposited to the credit of Central Government under the provisions of section 73B of the Finance Act, 1994.

18. Notwithstanding the above provisions of Section 73A, I have gone through the arguments made by M/s. TCPL that they have collected broadcasting charges and Service Tax leviable thereon on behalf of the broadcasting agencies and paid the said amount to the respective broadcasters who had displayed / broadcasted the advertisement procured by them on behalf of their customer. In other words, payment has been only routed through them wherein no service portion is involved and hence the same is not liable to Service Tax. In this regard, I find that when the payment is routed through the assessee the same is forming cost of displaying advertisement on behalf of the client. Therefore, in view of Rule 5 of the Service Tax (Determination of Value) Rules, 2006; the said cost should have been included in the taxable value of service. Thus, I observe that M/s. TCPL should have paid Service Tax on the total taxable value they have charged/collected from their clients, which they have failed to do so. I also observe that M/s. TCPL,

being an agent on behalf of their clients, had to ensure that whatever advertisements given by their customers has to be displayed by broadcaster with whom they have booked time slots. Therefore, I find that the activities of M/s. TCPL to receive advertisements from the customers, book the time slot with the broadcaster and ensure that the said advertisement had displayed by the broadcaster, he become mediator to arrange payment from customer to broadcaster through his books of accounts. The payment to the broadcaster from the customer of the assessee has not directly gone to the broadcaster. All these facts clearly suggest that the broadcasting of the advertisement through the broadcaster is a part of their activities. Therefore, I find that they have hired the service of broadcaster for broadcasting the advertisements supplied by their customer. Therefore, if entire transaction is looked from receiving advertisement from customers till the broadcasting of the same at specific time slot of the broadcaster, I find that broadcasting service hired by them is definitely their input service. Meaning thereby, the cost of input service hired is incurred by them and its cost has to be included in the taxable value of the service rendered by them which has not been done.

19. As stated by the assessee, they have changed their above invoicing / accounting patter w.e.f. 01/04/2014 and have started charging Service Tax on full value to their clients and are availing CENVAT of input service on the basis of input invoices issued to them by broadcasting agencies.

20. The assesse has shown following details in their S.T.-3 Returns for F. Y. 2014-15:-

Period	**Assessable Value under Advertising Service**	**S T Paid (cash + CENVAT)**	**Cenvat availed**
April-14 to Sept-14	19,06,48,819	2,35,64,194	2,21,79,585
Oct-14 to March-15	8,79,57,881	1,08,71,596	94,93,300

Total	**27,86,06,700**	**3,44,35,790**	**3,16,72,885**

21. Regarding their claim that the present S.C.N. issued under Section 73(1A) is not sustainable as the grounds and facts relied upon in the present S.C.N.s are different than those in previous S.C.N.s to the extent that they have changed their invoicing and accounting pattern and they are now charging Service Tax on full value to their clients and availing CENVAT on input invoices received from their service providers (Broadcasting Agencies), as objected by the Department, I find it unconvincing as the assessee has not declared their change of practice to the Department at the material time. I also find that when a letter calling for details, for the period for F.Y. 2014-15, was issued to the assessee on 04.08.2015 by J.R.S.; the assessee, vide their letter dt. 20.11.2015, simply furnished the information as under :-

Period	**Taxable Service**	**Taxable Value of Service**	**Service Tax collected on behalf of broadcaster**
April-14 to March-15	Broadcasting Service	Rs.22,13,76,309/-	Rs. 2,73,62,112/-

21.1 From above letter, it could not be derived / arrived at whether the assessee had changed their past practice or not. Though they had filed S.T.-3 Returns for F.Y. 2014-15, the said Returns were not accompanied with invoices issued by them nor does the law provide for the same. Thus, the Department came to know about the change of practice followed by the assessee only when they submitted reply to this S.C.N., i.e. on 11.07.2016 ONLY. The S.C.N. was issued prior to this, i.e. on 10.03.2016.

21.2 Further, the assessable value submitted by the assessee vide their letter dt. 20.11.2015 for the F. Y. 2014-15 and assessable value shown in ST-3 Returns are not matching and is subject to verification. I do not find specific verification from JRS/JAC regarding payment of Service Tax involved in the present demand, made by the assessee.

21.3 In view of the above, I find that the S.C.N. was issued invoking correct provisions of the law at the material time and assessee's plea is not tenable.

22. The S.C.N. also proposes to impose penalty under Section 76 and 77 of the Act. Though this is a case of demand under Section 73(A) of the Finance Act, 1994, penalties under Section 76 and 77 are liable to be imposed in view of CESTAT, Mumbai's decision in the case of Pandurang Travels vs. Commissioner C. Ex., Pune reported in 2009(15) STR 567 (Tri-Mumbai), holding that charging Service Tax and not depositing, is clear evasion of tax liability. Thus, I hold them liable to penalty to the extent provided under Section 76.

23. As regards penalty proposed under Section 77 of the Act, I find that M/s. TCPL has declared assessable value and Service Tax in their S.T.-3 Returns but the same is not ascertainable with reference to present demand and thereby have violated the provisions of Section 70 of the Finance Act, 1994. Accordingly, I held them liable fo to penalty under Section 77 of the Finance Act, 1994.

24. In view of foregoing discussions and findings, I pass the following order.

ORDER

i. I confirm demand of Service Tax amounting to **Rs. 2,73,62,112/-** in terms of Section 73A(3) read with Section 73(1) of the Finance Act, 1994 from M/s. TCPL.

ii. I also demand interest, as applicable, from M/s. TCPL under Section 73B read with Section 75 of the Finance Act, 1994 on the above amount of Service Tax.

iii. I impose penalty of Rs. 27,36,211/- on M/s. TCPL under the provisions of Section 76 of the Act ibid. The amount of penalty imposed under Section 76 shall be reduced to twenty-five percent of the penalty imposed under this order as above, provided where such reduced penalty is also paid within a period of thirty days of

the date of receipt of this order, along with the Service Tax and interest amount as above.

iv. I impose penalty of Rs. 10,000/- under Section 77 of the Finance Act, 1994 on M/s. TCPL.

25. The S.C.N. No. STC/4-79/O&A/2015-16 dt. 10.03.2016 stands disposed off in the above manner.

(V K Verma)
Principal Commissioner
CGST, Ahmedabad South.

F. No. STC/4-79/O&A/2015-16 Date: - __.02.2018

BY REGD POST AD.

To
M/s. Triton Communications Pvt. Ltd.
B-907/908, Premium House,
Gandhigram Station Road,
B/h. Natraj Cinema, Off Ashram Road,
Ahmedabad-380009.

Copy forwarded to:-

1. The Chief Commissioner, C. Ex. & CGST, Ahmedabad Zone, Ahmedabad.
2. The Principal Commissioner, C.Ex & CGST, Ahmedabad South, Ahmedabad (RRA Section).
3. Deputy/Assistant Commissioner of CGST (Audit), Ahmedabad.
4. The Deputy Commissioner of CGST, Division-VI, Ahmedabad South.
5. The Superintendent of CGST, Range-V, Division-VI, Ahmedabad South.
6. Superintendent (Systems), CGST, Ahmedabad South.
7. Guard file.