



DISPUTE MANAGEMENT
& ARBITRATION

CORPORATE
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TMT

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REGULATION &
PUBLIC POLICY

REAL
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**HAMMURABI
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ADVICE NOTE

LEVY OF SALES TAX ON LICENCING OF ADVERTISEMENT HOARDINGS

LEGAL

STRATEGY

PUBLIC POLICY

REGULATION

BRIEF BACKGROUND

Majority of the media/advertising agencies engaged in business transactions of renting out public hoardings all over the country are registered under Section 65(3), Chapter V of the Finance Act, 1994 thereby the said transactions attracts the levy of service tax. However, the state revenue authority classified the said transaction as including the element transfer of the right to use goods by qualifying the hoarding and the built-up structure upon which it is placed as “goods” and that the effective control over the same is transferred by the advertising agencies to the customers seeking to rent the hoarding for display of their advertisements. Two High Courts affirmed the said view despite there being various differing opinions by other state tax tribunals.

The questions of law arising out of the said dispute, which is pending consideration before the Hon’ble Supreme Court of India, are as under:

- (i) Whether providing space for advertisements by erecting hoardings etc., would involve sale of goods as contemplated under the provisions of the applicable VAT Act?
- (ii) Whether providing the space by erecting hoardings etc. for advertisements would be a good under the provisions of the applicable VAT Act?
- (iii) Is not the service of erection of hoardings etc. part and parcel of immovable property as defined under section 3 of the Transfer of Property Act and hence not covered under the VAT Act?
- (iv) Whether there is any transfer of goods when only the space by erecting hoarding etc. is being rented out for the purpose of advertisement?

QUERY

The querist essentially sought advice on the issue and the legal arguments pertaining to the same.

CONCLUSION DERIVED FROM THE LEGAL ANALYSIS

The conclusions derived upon extensively analysing the concerned legal provisions along with various legal precedents on the subject matter and the consequent arguments framed and extended are presented as under in brief:-

1. The out-of-home media industry is an industry of service providers.
2. The intent and purpose of the transaction in question ought to be duly considered for the purpose of taxation.
3. The clauses of the agreement/contract entered into between the advertising agency and its customers/clients ought to be interpreted for determination of the passage of effective control, if at all.
4. crucially, that service tax and the value added tax/sales tax are both mutually exclusive, thereby the application of one excludes that of the other.