

**AUTHORITY FOR ADVANCE RULINGS**  
**(Central Excise, Customs and Service Tax)**  
**Hotel Samrat, 4<sup>th</sup> Floor, Kautilya Marg, Chanakyapuri**  
**New Delhi**

**Present:**

**Justice V.S. Sirpurkar (Chairman)**

**Shri S.S.Rana (Member)**

**Shri R.S.Shukla (Member)**

The 22<sup>nd</sup> day of April, 2016

Ruling No. AAR/ST/11/2016

in

Application No. AAR/44/ST/31/2013

Name & address of the applicant : M/s AKQA Media India Private Ltd.,  
(Formerly known as M/s Mindshare India  
Private Limited), Mumbai

Commissioners concerned : Commissioner of Service Tax-VI,  
Mumbai-II, Commissionerate, 115,  
New Central Excise Bldg., M.K.Road,  
Churchgate Station, Mumbai-400020

Present for the applicant : Shri Prakash D.Shah, Advocate

Present for the Department : Shri Amresh Jain (AR)

Ruling

M/s AKQA Media India Pvt. Ltd (hereinafter also referred to as applicant) intends to carry out the activity of an advertising agency, whereby it shall provide professional services to its clients (i.e. Advertisers) in relation to placement of advertisements on various medium. Further, the applicant intends to charge commission from such clients as a consideration for provision of its services. While the applicant shall provide services only to Advertisers, depending on the quantum of its advertisements placed by the applicant on various medium, the applicant could be entailed to an incentive/ volume discount from the Media Owners. Applicant submits that they propose to undertake two business models, which are as under;

**Proposed Business Model 1- Placement of advertisement in traditional media on behalf of the advertiser**

Step 1- Client Contract:

The Advertisers (the clients) enters into contract with the Advertising Agency (like the applicant) to advise them for placements of advertisements in various media such as radio, print, television, internet, hoardings etc., and procurement of the approved media inventory from the media owners on behalf of the Advertiser.

Step 2- Preparation of Media Plan:

Advertiser briefs the Advertising Agency on the requirements to be considered for preparation of the media campaign such as target audience, budget, etc. Based on the parameters provided by the Advertiser, Advertising Agency prepares a media plan. The media plan generally consists of various media options available, various estimated rates for advertisement slots on different media, estimated agency commission amount and service tax leviable on the agency commission.

Step 3-Approval of the Media Plan:

Advertiser evaluates the media plan from a perspective of its efficiencies, expenditure, etc. Upon the evaluation, the Advertiser may make such amendments to the media plan as may be deemed appropriate. Post incorporation of the amendment required in the media plan, Advertiser finalises and approves the media plan prepared and submitted by the Advertising Agency.

Step-4 Issuance of Estimate by Advertising Agency

Based on the approved media plan, the Advertising Agency issues an estimate to the Advertiser for the placement of advertisements. Vide the estimates, the Advertiser authorizes the Advertising Agency to place the advertisement on various media on behalf of the Advertiser.

Step 5- Issuance of Release Order by Advertising Agency:

Based on the approved estimate, Advertising Agency issues a release order on various Media Owner, on behalf of the Advertiser for placement of the advertisement and costs of the advertisement is generally received by the Advertising Agency in advance.

Step-6 Monitoring of campaign:

Advertising Agency monitors the display of the advertisement on the various media in order to ensure that the media campaign is being executed as per the approved media

plan, estimate and release order. Advertising Agency points out any deviation in the display of the advertisement to the Media Owner and the Advertiser.

Step 7-Receipt of invoice from media vendor:

The Media Owner raises its invoices for the cost of the media inventory sold on the advertiser and hands over the said invoice to the Advertising Agency. The invoice typically proves the following details:

- a) Name of the Advertiser
- b) Details of the advertisement displayed
- c) Name of the Advertising Agency involved
- d) Costs of advertisement placed (less agency commission)
- e) Service Tax(including cess, if any) on the cost of advertisement placed (other than non-taxable media such as print media)

Advertising Agency makes the payment for the media inventory to the Media Owners on behalf of the Advertiser after retaining its commission. The Media Owner pays the service tax (including cess, if any) on the invoice value (less commission of Advertising Agency).

#### Step 8- Raising of invoice by Advertising Agency:

Advertising Agency further raises an invoice on the Advertiser for its fee / agency commission plus applicable service tax (including cess, if any) thereon (the same is agreed in the approved media plan and the estimate). Advertising Agency adjusts the payment made to the Media Owner from and out of advance or seeks reimbursement of costs of advertisement plus applicable taxes (including cess, if any) charged by the media owner. The Advertising Agency pays the service tax (including cess, if any) on the agency commission charged by it to the Advertiser. The Advertiser takes credit of service tax paid by the Media Owner on the cost of the media inventory, based on the taxable invoice issued in the name of the Advertiser. Further, Advertiser takes credit of service tax paid by the Advertising Agency on the agency commission, based on the taxable invoice issued in the name of the Advertiser by the Advertising Agency.

#### Step 9- Receipt of volume discount:

Post the completion of the transaction, at the year end, Media Owners, suo moto, at their sole discretion, may give incentives / volume discounts to the applicant (i.e. Advertising Agency). The parameters for providing such incentives/volume discount are decided by the Media Owner unilaterally. The payment is purely gratuitous. There is no contract executed by the Advertising Agency with Media Owners.

### **Proposed Business Model 2 – Buying and selling of advertisement inventory in non-traditional media, on its own account**

#### Step 1- Client Contract:

Advertising Agency is contractually engaged by the Advertiser to advise them with regard to media planning and placements of advertisements in various media.

#### Step 2- Preparation of Media Plan:

Advertiser brief the Advertising Agency on the requirements to be considered for preparation of the media campaign such as target audience, budget etc. Based on the parameters provided by the Advertiser, Advertising Agency prepares a media plan. The media plan generally consists of various media options available, various estimated rates for advertisement slots on different media and service tax (including cess, if any) leviable on the media costs. The rates quoted to the Advertiser include the margin of the Advertising Agency.

#### Step 3- Approval of the Media Plan:

Advertiser evaluates the media plan from a perspective of its efficiencies, expenditure, etc. Upon the evaluation, the Advertiser may make such amendments to the media plan as may be deemed appropriate. Post incorporation of the amendment required in the media plan, Advertiser finalises and approves the media plan prepared and submitted by the Advertising Agency.

#### Step 4- Issuance of Estimates by Advertising Agency:

Based on the approved media plan, the Advertising Agency issues an estimate to the Advertiser for the costs of the advertisements (which include the margin of the Advertising Agency) for its approval.

#### Step 5- Issuance of Release Order by Advertising Agency:

Based on the approved estimates, Advertising Agency issues a release order on various media owner, for placement of the advertisement.

#### Step 6- Monitoring of campaign:

Advertising Agency monitoring the display of the advertisement on the various media in order to ensure that the media campaign is being executed as per the approved media plan, estimate and release order. Advertising Agency points out any deviation in the display of the advertisement to the Media Owner and the advertiser.

Step 7- Receipt of invoice from media vendor:

The Media Owner raises its invoice for the cost of the media inventory sold on the Advertising Agency. The invoice typically provides the following details:

- a) Name of the Advertising Agency
- b) Name of the Advertiser
- c) Details of the advertisement displayed
- d) Costs of advertisement placed (less margin of Advertising Agency)
- e) Service Tax(including cess, if any) on the cost of advertisement (other than non-taxable media such as print media)

Advertising Agency makes the payment for the media inventory purchased from the Media Owners either from and out of the advance or from its account. The Media Owner pays the service tax (including cess, if any) on the invoice value (without the margin of the Advertising Agency).

Step 8- Raising of invoice by Advertising Agency:

Advertising Agency further raises an invoice on the Advertiser for the consolidated costs including the margin of the Advertising Agency and service tax (including cess, if any) (the same is agreed in the approved media plan and the estimate). The Advertising Agency takes credit of service tax paid by the media based on the taxable invoice issued in the name of the Advertising Agency. The Advertising Agency pays the service tax (including cess, if any) on the gross amount charged to the advertiser (which include both the costs to the media owner and the margin of the Advertising Agency).

Step 9- Receipt of payment:

Advertising Agency receives the payment from the advertiser for the consolidated amount (which includes both the costs to the media owner and the margin of the Advertising Agency).

Step 10- Receipt of volume discount:

Post the completion of the transaction, at the year end, Media Owner, suo moto, at its own discretion may give incentives/volume discounts to the applicant (i.e. Advertising Agency). The parameters for providing such incentives / volume discount are decided by the media owner unilaterally. This payment is purely gratuitous. There is no contract executed by the Advertising Agency with Media Owners.

2. Applicant has raised following questions before this Authority for rulings;

**Question 1** – *Under proposed Business Model 1, while the applicant shall be appointed by its clients i.e. the advertiser to provide services, will incidental receipt of incentives/volume discounts from Media Owner shall be considered to be providing a service, as defined under the Act, to the Media Owner and shall the same be liable to Service Tax?*

**Question 2** – *Under proposed Business Model 2, while the applicant shall buy and sell the media inventory on its own account to the advertiser, will incidental receipt of incentives/volume discounts from Media Owner shall be considered to be providing a service, as defined under the Act, to the Media Owner and shall the same be liable to Service Tax?*

**Question 3** – *In case, it is considered that the applicant is providing any service to the Media Owner, in the course of providing advertisement placement services to its client, then on what value should the Service Tax be applicable under the Act?*

3. Applicant inter-alia submits that the incidental receipt of incentives / volume discounts by the applicant from the Media Owners are gratuitous payment and not for providing services; that no service tax is payable on such incentives; that the applicant does not enter into any contract for provision of service with the Media Owners; that the applicant places the order on behalf of the Advertiser; that the Advertiser is liable to pay the cost of the advertisement to the Media Owners and the agency commission to the applicant; that the applicant pays service tax on the agency commission received by it from the advertiser; that the applicant submits that no 'service' is provided or agreed to be provided by the applicant to the Media Owner; that these incentives / volume discounts are paid at the sole discretion of the Media Owners; that there is no obligation, either contractual or otherwise, on the media owners to pay incentives / volume discounts to the applicant. Applicant further submits that the above issue was examined by the CESTAT in its order in the case of Grey Worldwide India Private Limited-2015(37) S.T.R. 597 (Tri.-Mumbai) wherein it was held that no service tax is payable on such amount (i.e. incentives / volume discounts) received by the Advertising Agency from the Media Owners; that in any event, once media owner discharges the service tax on the gross amount charged by them to the advertisers and the applicant having discharged the service tax on the agency commission received by the applicant, no further service tax will be payable as consideration for services charged by the media owners and the applicant has already suffered the service tax in full.

4. In regard to the Proposed Business Model 2, it is submitted that the applicant would be paying the service tax (including cess, if any) on the gross amount charged to the advertiser for the media inventory (except non-taxable media such as print media). The media owners would charge the applicant the service tax on the gross amount charged to the applicant. Any incentives / volume discount received by the applicant from Media Owners post the issuance of the taxable invoice on the applicant for the gross amount charged to the applicant, no service tax will be payable on the said incentive / volume discount as the service tax, at the first instance, will be paid on the gross amount charged to the applicant. The applicant, in turn, will pay service tax on the gross amount charged by the applicant to the advertiser.

5. Applicant further submits that post Negative List regime, Jurisdictional Commissioner of Service Tax, who is also Commissioner for the applicant has passed an Order-in-Original holding that volume discounts are not liable to Service Tax; that they do not provide any promotion or marketing services to the Media Owners; that applicant does not provide any Declared Services under Section 66E of the Finance Act, 1994 and are not undertaking any activity for consideration for Media Owners.

6. Revenue submits that as far as proposed Business Model-1 is concerned, the volume discount received by the applicant for the services provided to the Media Owner is liable to Service Tax. Revenue further submits that reasons for this conclusion that invoices from Media Owner only mentions the name of the applicant, thus there is contractual relationship for provision of service between the applicant and Media Owner; that entire amount payable to Media Owner in respect of media is to be paid by

the applicant; that the applicant is to receive separate amount as consideration for the services provided to the Advertiser.

7. As far as Business Model 2 is concerned, Revenue submits that applicant is to sell media inventory on his own account to the Advertiser; that in such a case, applicant need to discharge Service Tax liability on the total sale price invoiced to the Advertiser. Revenue concludes that in this Business Model 2 also, applicant is required to pay Service Tax on the amount received from the Media Owner treating said amount as consideration for the services provided.

8. In relation of Question No. 3 raised by the applicant, Revenue submits that unless the terms of the contract are known, it is not possible to offer specific comments.

9. It is observed that applicant has given two proposed business models, as far as subject activity is concerned. Business Model-1 is with respect to placement of advertisement in traditional media on behalf of the advertiser. Business Model 2 pertains to buying and selling of the advertisement inventory in non-traditional media, on his own (applicant) account. Now, we come to the issues raised by the Revenue. As far as Business Model-1 is concerned, Revenue submits that the amount received by the applicant from the Media Owner is in the nature of consideration received for the services provided and liable to Service Tax for following reasons;

- a) Invoices pertaining to transaction from Media Owner only mention the name of the applicant. Consequently, contractual relationship for provision of service exists only between these two parties.
- b) Entire amount payable to Media Owner in respect of space and time for media is payable by the applicant.
- c) Applicant received separate amount as consideration for the service provided to the Advertiser.

10. It is noticed that "Step 7 – Receipt of invoice from media vendor" of Business Model-1, clearly mentions that the Media Owner raises its invoices for the cost of the media inventory sold on the advertiser. Further, invoice will mention the name of advertiser and also the name of the applicant, besides other details. Therefore, it is evident that the media inventory is sold to the advertiser and not to the applicant. Also, Revenue is incorrect in stating that invoice will only mention the name of the applicant. The submission of Revenue that the entire amount is payable to Media Owner in respect of space and time for media by the applicant, is also incorrect. In Step 7 of Business Model-1, it has been made amply clear that Advertising Agency (applicant) makes the payment for the media inventory to the Media Owners, on behalf of the Advertiser after retaining its commission. It is further alleged by the Revenue that applicant received separate amount as consideration for the services provided to the Advertiser. Step 8 of Business Model -1 mentions that the amount received by the applicant from the Advertiser is its fees / agency commission plus Service Tax. It is to be observed that the question raised by Revenue relating to Business Model 1 is based on incorrect appreciation of facts.

11. In respect of Business Model-2, Revenue submits that applicant sells media inventory on his own account to the Advertiser; that in such case, applicant needs to discharge Service Tax liability on the total sale price invoiced to the Advertiser; that applicant is entitled to avail CENVAT credit of Service Tax paid to the Media Owner for purchase of media inventory. Applicant has confirmed that they would be paying

Service Tax (including cess, if any) on the gross amount charged to the Advertiser for the media inventory (except non-taxable media such as print media); that Advertising Agency would take credit of Service Tax paid by the Media Owner on taxable invoice issued in the name of Advertising Agency. Based on the above assumptions, which have been found to be factually not correct, Revenue concludes that applicant is required to pay Service Tax on the amount received from Media owner treating said amount as consideration for services provided. The question raised by the Revenue are based on incorrect appreciation of facts, the subject question does not survive.

12. Revenue further submits that as per Section 65B of Finance Act, 1994, Service has following ingredients;

- a) any activity
- b) by one person for another
- c) for consideration

and in the present case, all 3 ingredients are satisfied, thus service provided to Media Owner by the applicant will be liable to Service Tax. Applicant submits that they will not carry out any activity for consideration. It is to be observed that in the definition of 'service', there has to be nexus between activity and consideration. In case, there is no nexus between the activity and consideration, such an activity shall not fall under the definition of "service", as the concept "activity for consideration" involves an element of contractual relationship. This relationship could be express or implied, for which the burden of proof would be on the Department. In the subject case, no iota of the evidence has been produced before us by the Revenue to indicate that there is an activity undertaken by the applicant, which resulted in Media Owner giving volume discount to the applicant, especially when the choice of selecting Media Owner is reportedly with the Advertiser and not with the Advertising Agency (applicant). Therefore, volume discount that could be received from the Media Owners by the applicant is not in relation to any activity undertaken by the applicant. Therefore, it is not service.

13. Revenue has also argued that the applicant provides Declared Service in terms of Section 66 E (e) of the Finance Act, 1944 to Media Owners. Section 66E (e) reads as under;

*66E. The following shall constitute declared services, namely;*

*(e) agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act.*

It is observed that there is no agreement or contractual obligation between the applicant and the Media Owner to give volume discount to the applicant by the Media Owner. Volume discount is not fixed and is to be given at the discretion of Media Owner. Further, volume discount is gratuitous. Applicant / Advertising Agencies cannot claim it as a matter of right. Therefore, applicant is not providing declared services to the Media Owner.

14. Revenue has raised another issue that applicant provides promotion or marketing services to the Media Owners by giving preferential treatment to the Media Owners, which provide volume discounts / incentives. It is noticed by us that Media Owners are not under any legal obligation to pay volume discounts and it is purely discretionary on the part of Media Owners. Applicant is not carrying out any activity to promote any Media Owner's business. Further, which Media Owner is to be engaged,

is the decision of the advertiser and not of the applicant. Therefore, applicant cannot be said to provide promotion or marketing services to Media Owners.

15. It has been brought to our notice that Jurisdictional Commissioner of the applicant has issued Order-in-Original No. 08 / ST-VI/RK/2015 dated 15.01.2016 in M/s Group M. Media India Private Limited wherein he himself has held that volume discount / incentive is not liable to Service Tax.

16. Further, in M/s Grey Worldwide India Private Ltd., [2014-TIOL-1650-CESTATE-MUM], Tribunal held that media giving certain incentives by way of volume discounts cannot be levied to Service Tax. Relevant portion of the Judgment is reproduced below:

*Thereafter, at the end of the year, depending upon the volume of business given by the advertising agency, the media gives certain incentives by way of volume discounts/rate difference. There is no agreement or understanding or any contract between the advertising agency and the media for promotion of the media's business activities. There is also no obligation on the part of the media to give these incentives.*

*These payments are made only as a gratuitous payment for the advertisements placed on the media. There is no contractual obligation between the advertising agency and the media for provision of any services. In the absence of such a contractual obligation, it is difficult to accept the Revenue's contention that on the incentives received, the appellant is liable to service tax under BAS. This was the view taken by this Tribunal consistently in a series of decisions starting from Euro RSCG Advertising Ltd.*

17. In view of the above, we rule as under;

*1. In proposed Business Model 1, while the applicant shall be appointed by its clients i.e. the advertiser to provide services, incidental receipt of incentives/volume discounts from Media Owner shall not be considered to be providing a service, as defined under the Finance Act, 1994, to the Media Owner and shall not be liable to Service Tax.*

*2. In proposed Business Model 2, while the applicant shall buy and sell the media inventory on its own account to the advertiser, incidental receipt of incentives/volume discounts from Media Owner shall not be considered to be providing a service, as defined under the Finance Act, 1994, to the Media Owner and shall not be liable to Service Tax.*

*3. In view of Rulings 1 and 2 above, Question 3 becomes infructuous.*

-Sd-  
**(S.S.Rana)**  
**Member(R)**

-Sd-  
**(V.S.Sirpurkar)**  
**Chairman**

-Sd-  
**(R.S.Shukla)**  
**Member(L)**