CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
ALLAHABAD

REGIONAL BENCH - COURT NO.I

Service Tax Appeal No.51094 of 2014

(Arising out of the Order-In-Original No.-18-COMMISSIONER-NOIDA-2013-14, dated -12/11/2013 passed by Commissioner, Customs, Central Excise & Service Tax, Noida)

M/s Fox Mandal & Co. **.....Appellant**
(A-9, Sector-9, Noida
Gautam Budha Nagar
U.P 201301)

VERSUS

Commissioner, Customs, Central Excise & Service Tax, Noida **....Respondent**
(C-56/42, Sector-62, Noida)

APPEARANCE:

Shri Sanjay Kumar, Advocate for the Appellant
Shri Santosh Kumar, Authorized Representative for the Respondent

CORAM: HON'BLE MR. P.K. CHOUDHARY, MEMBER (JUDICIAL)
HON'BLE MR. SANJIV SRIVASTAVA, MEMBER (TECHNICAL)

FINAL ORDER NO.-70315/2024

DATE OF HEARING : 06.02.2024
DATE OF DECISION : 06.06.2024

PER : BENCH

This present appeal is directed against Order-In-Original No. 18-COMMISSIONER-NOIDA-2013-14, dated -12/11/2013 of the Commissioner Central Excise, Customs and Service tax Noida. By the impugned order following has been held:

(i) *I confirm the demand of Service tax Rs 7,41, 83,988/-, Edu Cess Rs. 14, 83,680/- and Secondary & Higher Edu. Cess Rs. 7,41,839/- total Rs. 7,64,09,507/- (*

Rupees Seven Crores Sixty four Lakhs nine thousand five hundred seven only), under section 73(2) of Finance Act,1994, being not paid by M/s Fox Mandal and Little & Co. A-9, Sector -9, Noida during the period 2007-08 to 2009-10 Upto August2009

(ii) *I confirm demand of interest on the amount of service tax as confirmed above and order to pay the same under the provision of Section 75 of the Finance Act,1994*

(iii) *I impose a penalty of Rs. 10,000/- (Ten Thousand Only) under section 77(a) & (b) of Finance Act, 1994, ibid for their acts of omission and commission as mentioned in the preceding paras.*

(iv) *I also impose a penalty of Rs. 7,64,09,507/-(Rupees Seven Crores Sixty four Lakhs nine thousand five hundred seven only) under section 78 (1) of Finance Act, 1994 for their various acts of omission and commission as mentioned in the preceding paras.*

2.1 Appellant is renowned Law Firm engaged in providing all kind of legal services in different fields of various laws such as compliance with relevant laws, assistance in filing various returns and forms under various laws etc. to its clients.

2.2 Prior to 01.09.2009, legal services were not subject to Service Tax under Finance Act, 1994. Therefore, the appellant was not registered with the Service Tax Department as its services were not exigible to Service Tax. However, w.e.f. 01.09.2009, a new category of service i.e. "Legal Consultancy Services" was introduced vide which legal services were bought under the ambit of Service tax. Accordingly, the appellant got registered with the Service Tax Department vide STC No.AAAFF0687JST001 dated 15.09.2009 under the taxable Category of Legal Consultancy Services" and started discharging its service tax liability as per applicable provisions.

2.3 On the basis of information received from Commissioner, Central Excise & Service Tax Triuchirappalli that appellant are engaged in providing services in relation to merger and acquisitions which were liable to be taxed under the category of

"Management and Business Consultant services, investigations were initiated against the appellant. As result of investigations undertake it was found that though the appellants were providing the service in relation to merger and acquisitions to their clients they were not paying any service tax on the said services. The amount of service tax which was thus not paid on the basis of Gross Receipts as per the balance sheets of the respective years is as detailed below:

Financial year	Gross Receipt as per B/S	Amount Not Taxable	Taxable Amount	Rate of S Tax	Service tax Payable
2007-08	19,27,70,673	2,780	19,27,67,893	12.36	2,38,26,112
2008-09	29,28,61,785	1,22,10,147	28,06,51,638	12.36	3,46,88,543
2009-10*	20,04,60,264	5,56,79,901	14,47,80,363	12.36	1,78,94,853
	68,60,92,722		61,81,99,894		7,64,09,508

* Upto 31.08.2009

2.4 Thus revenue was of the view by not paying the service tax in respect of these services appellant has contravened the provisions of Finance Act, 1994 with intent to evade payment of service tax as they provided taxable services without getting registered with department for the purpose of making payment of service tax. Though liable to pay service tax on account of services rendered by them they preferred to avoid payment of tax by suppression of vital facts from the department. They never applied for obtaining service tax registration and also refrained from filing ST-3 returns during the above said period. The contraventions have been summarized as follows:

(a) Section 66 of Finance Act, 1994, in as much as they failed to pay service tax on taxable services provided by them during the period April'2007 to August2009.

(b) Section 68 of the Finance Act, 1994 read with Rule 6 of Service Tax Rules, 1994- They have contravened Rule 6 in as much as they have never made payment of service tax during the period April' 2007 to August 2009.

(c) Section 69 of Finance Act, 1994 read with Rule 4 of Service Tax Rules 1994 in as much as they failed to make application for registration during the period April'2007 to August'2009.

(d) Section 70 of Finance Act, 1994 read with Rule 7 of Service Tax Rules, 1994 in as much as they have never filed ST-'3 returns to the department during the period April'2007 to August'2009

2.5 The nonpayment of service tax was unearthed by department by causing investigation against them, hence,

- the provisions of Section 73(1) of Finance Act,1994 for extended period of limitation was invokable and the service tax amount determined is recoverable from party
- interest at appropriate rate on the said amount of service tax and education cess under the provisions of section 75 of Finance Act, 1994 was also recoverable.

2.6 Appellant for the contraventions have rendered themselves to penal action under section 76 & 78 of Finance Act, 1994.

2.7 A Show Cause dated 19.10.2012 was issued to the appellant asking them to show cause as to why:

(i) An amount of Total Rs. 7,64,09,507/- (Rupees Seven Crores Sixty four Lakhs nine thousand five hundred seven only) (Service tax Rs 7, 41,83,988/-, Edu Cess Rs. 14, 83,680/- and Secondary & Higher Edu. Cess Rs.7,41,839/-) being service ax not paid during the period 2007-08 to 2009-10 (Upto August2009), should not be demanded from them under sub section(1) of section 73 of Finance Act,1994.

(ii) Interest at appropriate rate as applicable during relevant period under section 75 of Finance Act, 1994 should not be demanded from them.

(iii) Penalty should not be imposed under section 77 of Finance Act, 1994 for their various acts of omission and commission as mentioned in the preceding paras.

(iv) Penalty should not be imposed under section 78 of Finance Act, 1994 for their various acts of omission and commission as mentioned in the preceding paras.

2.8 The show cause notice was adjudicated as per the impugned order referred in para 1 above.

2.9 Aggrieved by the impugned order appellant have filed this appeal.

3.1 Have heard Shri Sanjay Kumar, Advocate for the appellant and Shri Santosh Kumar, Authorized Representative for the revenue.

3.2 The counsel for the appellant submits that:

- the Appellant is a renowned legal firm which provides services in relation to legal compliances to its clients such as dealing with legal matters, co-ordination on legal matters l.e. making petition, drafting, vetting, legal advisory, filing of appeal etc.
- the appellant also provides certain legal support services. In this respect, it is to be noted that such legal services being provided by the appellant are in no way concerned with the management of any business or organization.
- The services provided by the appellant do not include any planning, organizing, staffing etc.
- The services provided by the appellant are specifically covered under the ambit of "Legal Consultancy Services" as per Section 65(105)(zzzzm) of the Finance Act, 1994.
- The said category was introduced w.e.f. 01.09.2009 and accordingly the appellant sought registration under the said category and started discharging the service tax on the legal services provided w.e.f. 01.09.2009. Since, the levy of service tax on "Legal Consultancy Services" has introduced from 01.09.2009 therefore, it will have no retrospective effect.
- As per the said definition of management and business consultant, any service provided by a management or business consultant in relation to management of any business or organization shall be covered under the ambit of this category.
- From the definition, it is evident that in order to qualify as a "Management or Business Consultant/ Management Consultant", a person must provide services which are in relation to management of any business or organization

and it also includes any person who is rendering advice, consultancy or technical assistance in relation to:-

- Financial Management
- Human Resource Management
- Marketing Management
- Other Similar areas of Management

➢ without specifying and proving the provision of any service, impugned order **confirmed the demand against the appellant on the Gross Value as per P & L A/c.** The onus to prove the provision of service while proposing and confirming the demand lies on the Department which they have failed to do. Reliance is placed on the decision of Hon'ble Tribunal, Delhi in the case of **M/s. Deltax Enterprises [2017 (12) TMI 966- CESTAT New Delhi].**

➢ even if it is considered that the services provided by the appellant are covered under the ambit of "Management Consultancy Services" (though strongly denied) then it shall be considered as "Export of Service". Since, most of the Clients of the appellant are located outside India and the appellant is receiving the payment in convertible Foreign Exchange. Therefore as per the **Rule 3 (2) of Export of Service Rules, 2005** the said services fall under the purview of "Export of Service".

➢ Reliance is placed on the following judgements:-

- CRISIL Limited vs. CCE, Thane-I, 2016-TIOL-2643-CESTAT- MUM
- Ernst & Young Private Limited Vs. CST, New Delhi 2012 (27) STR 462 (Tri.- Del.)
- B.S.R. & Co. Vs. CST, Gurgaon 2013 (30) STR 242 (Tri.- Del.)
- Punjab Venture Capital Limited Vs. CCE, Chandigarh 2011 (24) STR 410 (Tri.- Del.)
- Kr. Alloys Ltd. Vs. CCE, Calicut 2008 (8) TMI 144-CESTAT Bangalore

3.3 Learned Departmental Representative reiterated the findings recorded in the impugned order.

4.1 We have considered the impugned order along with the submissions made in appeal and during the course of argument.

4.2 Impugned order records following findings to determine the issue against the appellant:

"22. I have carefully gone through the allegation made in notice to show cause, defence reply submitted by the party and submission made during the personal hearing. I observe that in notice to show cause it has been alleged that services provided by the party in connection with merger and acquisition is in the nature of providing an advice, assistance in the financial management of an organization resulting into the merger, acquisition or other forms of financial or organizational restructuring of company hence the services falls under 'Management or Business Consultant Services" under section 65(65) of Chapter V of the finance Act, 1994 and the party is liable to pay service tax accordingly. Whereas the party have mainly contended that they have only provided legal advice, which is not leviable to service tax. Thus, I find that the moot question I have to decide is whether the services relating to merger, acquisition or other forms of financial or organizational restructuring can be classified as Management or Business Consultant Services' defined under section 65(65) of Chapter V of the finance Act,1994.

23. The party's main contention is that being a law firm, the activities of Fox Mandal relate to legal advice and purely concerned with field of law and they have not provided any service in respect of commercial and canonic aspects of activities undertaken by our clients. To examine the party's contention, with respect to the allegation made in notice to show cause, it is essential to consider the activities undertaken b them and to test these with respect to relevant statutory provisions.

24. To consider the activities undertaken by the party, it is essential to party's operational area, as detailed in their broacher (RUD-5A) includes, banking firms and finance, (including project finance, capital markets consider and mutual funds,) initial public offerings, insurance, commercial disputes property law and *conveyancing , corporate and commercial law, energy (including coal, oil and gas), mining , telecommunications, intellectual property partnership, testamentary , air law (including aircraft leasing), shipping taxation, direct and dispute resolution by litigation and arbitration before international and domestic tribunals.*

25. Further the prospective activity under taking by them for 'Mergers and Acquisitions' it has been describe that they firm has cast iron experience in Merger & Acquisition "M&A" having worked for major Indian and multinational corporations and is rated as the best by various reputed International legal journals .The firm advises its clients on all aspects of M&A. That they have a dedicated core team of experts selected for providing the requisite services with the right mix of expertise and experience, which ensure that our services are of the highest quality. Our core M&A practice group is assisted by experts from other related key areas such as employee benefits, environment regulation antitrust, intellectual property, real estate and tax. Experienced and competent staff with specialized knowledge and expertise supports these professionals.

26. It has been further elaborated that besides dedication to work, counsels at FML endorse high quality of work, and provide prompt and integrated service to the client base don their needs and requirement. Beside the other corporate issues, FML, counsels have handled major M&A matters in the wake of liberalization policy in India; this has involved undertaking of extensive assignments encompassing the following-

(i) ***Due Diligence -*** *FML counsels have conducted extensive Due Diligence, both form legal and financial perspectives, in order to ascertain the assets and liabilities of the target company, based on its published and the provisional accounts of the subsequent period. Visited Data rooms set up by the target company, reviewed the necessary transactional documents and prepared comprehensive reports thereon*

(ii) ***Risk Analysis -*** *FML counsels have varied experience on advising client about the risks involved legal,*

financial as well as commercial risks in the proposed transaction. The involves the ascertainment of any contingent liabilities pending litigation, incomplete documentation or reporting any pending commitments of the target company not recorded

(iii) ***Approval from the High Court -*** *FML has a dedicated litigation team in the books of accounts etc with expertise In suggesting remedial measures and Or steps to rectify the shortfall or deficiencies on the part of the target company, in complying with the statutory requirements*

(iv) ***Documentation -*** *Counsels at FML have extensive experience in structuring and negotiating the relatively complicated documentation involved in M&A. We have vast experience in formation of companies private as well a s public and we have formulated and drafted various documents like the Articles of Association, Memorandum of Association Technology Transfer Agreements, Shareholders Agreement, Joint Venture Agreement etc. The firm also provides requisite legal support in negotiating and finalization of the document required to close the deals The firm has a team of experts who negotiate and provide requisite legal support in closure of the transactions, including reviewing and advising on closing documents*

(v) ***Permissions and Approvals -*** *FML advise its clients on the requisite approvals and permissions under the prevailing corporate laws and assists the client in processing the same with the concerned bodies viz RBI,FIPB & seeking sector specific approvals*

(vi) ***Tax Issues -*** *FML's core M&A team also includes tax experts to advise the clients on tax planning and other related issues*

(vii) ***Post Closing Compliance -*** *We also provides advice with respect to post closing compliance including drafting & filing of the necessary documents before the concerned Registrar of Companies, the FIPB and in case*

of requirement sending intimations required under the various contracts.

(viii) ***Management Issues -*** *FML has varied experience in advising the clients on the method and extent of investment, methods of acquiring management control, representation on Board and management etc*

27. As above the party advises its clients on all aspects of M&A (Merger & Acquisition) including Management Issues by counsels besides conducting extensive diligence, both form legal and financial perspectives, in order to ascertain the assets and liabilities of the target company, based on its published and the provisional accounts of the subsequent period. I observe that the nature of services provided by them as adviser/consultant varies depending upon the contractual obligation, financial & commercial needs and the legal compliance under various regulations governing such transactions. It is further observed that FML counsels have varied experience on advising client about the risks involved legal, financial as well as commercial risks in the proposed transaction. Their involvement has been further indicated in the ascertainment of any contingent liabilities pending litigation, incomplete documentation or reporting any pending commitments of the target company not recorded in the books of accounts etc. Whereas the agencies engaged in pure legal activities are required to play only a statutory role under any act or regulation. It may be noted that the actual activity of conducting a business is different from the activity of managing merger & amalgamation and acquisition therefore is to be considered different to regular management of a business concern. I therefore observe that activities in relation to advising client about the risks involved legal, financial as well as commercial aspects in the prospective transactions: indicates that the services provided by hem also relates to advice/consultancy or guidance in field of business & commerce and are not purely of legal nature, as claimed by the party

28. Now to determine as to whether the activities undertaken by the party is classifiable under "Management or Business Consultant Services". I observe that the services of Management

Consultant Services were brought into the Service tax net with effect from 16.10.1998 vide notification No. 53/98-ST dated 07.10.1998 and the same was rechristened as "Management or Business Consultant Services" with effect from 01.06.2007. As per section 65(65) of Chapter V of the finance Act, 1994

"Management or business consultant" means any person who is engaged in providing any service, either directly or indirectly, in connection with the management of any organization or business in any manner and

includes any person who renders any advice, consultancy or technical assistance, in relation to financial management, human resources management, marketing management, production management, logistics management, procurement and management of information technology resources or other similar areas of management"

In terms of Section 65(105) (r), Taxable services means any service provided or to be provided to a client (to any person with effect from 16.052008), by a management or business consultant in connection with the management of any organization or business, in any manner.

29. As above the scope and coverage is very wide. I observe that definition is in two parts, first limb is specific while the second limb is inclusive. The general or first limb follow that no particular qualification is required for Management Consultant". As long as the in providing any service, either directly or indirectly, in connection with the management of any organization or business in any manner etc., they are covered under the said definition and service tax is payable. The service may be provided directly or indirectly. The use of the words directly and indirectly considerably expand the scope of coverage of the taxable service, only condition is that these should be in connection with the management of any organization or any business on any manner.

The second limb is inclusive and further expands the scope of the term "management consultant ". The said limb cover specific functional areas of management accordingly, services in relation *to finance, human resources marketing, production, logistic procurement, information technology resources or other similar areas of management would all be covered with in the purview of service tax*

30. The term management is generally understood to mean running the affairs of an organization in an organized and systematic manner. To be able to do this efficiently and effectively, management typically involves carrying out a host of activities, functions and tasks at different levels. Thus, the term management encompasses both strategic and operational level functioning and would include tasks such as planning, organizing, staffing, directing controlling and coordinating. As evident from the brochure of the party, all the described operations are being undertaken by the party

31. Management also invariably involves designing organizational structure around functions such as marketing, manufacturing research and development and finance and /or business area such as product groups or geographical markets. Thus management of any organization involves carrying a wide variety of clearly defined activities across a number or organizational sub-units in a coherent and coordinated manner. Since the expression management is an inclusive term, 'management consultant' would also be equally encompassing expression and would include any adviser who render services or any aspect of management.

32. It is observed that merger and advisory services rendered by any adviser or consultant may include one or more of the following specific components or activities These may either be on the buy-side transaction assisting companies to acquire or on the sell-side assisting companies to divest, resulting into merger, acquisition or other forms of organizational restructuring:-

(a) Strategic review and establishing strategic rationale for merger or. acquisition;

(b) Performing financial and business analysis;

(c) Target screening, identification and evaluation;

(d) Financial analysis and valuation of target company or merging companies,

(e) Carrying out financial and legal due diligence;

(f) Detailed analysis of regulatory and tax implications and evaluation of alternative structures;

(g) Deal structuring such as merger, friendly acquisition, hostile bid, asset buy-out, de- merger, slump sale etc;

(h) Advising as to the means and source of financing transactions and arranging finance, if required;

(i) Complying with regulatory requirements such as managing public offer under SEBI's Takeover Regulations;

(j) Counseling on bidding strategy and tactics;

(k) Establishing negotiating positions and assist in negotiating with the target company management;

(l) Coordinating with legal counsel in finalizing the terms of the purchase/acquisition agreement; and

(m) Assisting in post-acquisition integration

Out of the above services, so far as (a) and (m) are concerned these services are mainly offered by strategy/general management consultants or other consultants specializing in Human resource management. In so far as (b) to (I), these services are offered, either jointly or severally, by variety of firms

33. The services provided in connection with merger and acquisition is in the nature of providing an advice, assistance in the financial management of an organization resulting into merger, acquisition or other form of financial or organizational restructuring of a company. The natures of services provided by an adviser/consultant vary depending upon the contractual obligation and the legal compliance under various regulations governing such transactions. However, these factors in no way change the nature of service provided by such service provider, accordingly, they appear to be providing service in relation to management of an organization

34. I observe that the notice to show cause rely the board's letter F.No. 177/2/2001 CX-4, dated 27.06, which has *considered the issue ad longam and opined that management of any organization Involves carrying out a wide variety of clearly defined activities across a number of organizational sub-units in a coherent and coordinated manner. Since the expression "Management" is an Inclusive term, 'management consultant would also be equally encompassing expression and would include any adviser who renders services on any aspect of management They have further opined that financial advisory services rendered in merger and acquisition transactions are dearly In the nature of services in connection with the management of an organization as merger and acquisition themselves are important dimension of modern management,*

35. It has been further considered that after considering the ILO publication on "management consulting", various other literature on the subject, management practices and profiles of practicing management consultants they have concluded the following:

(i) the term "management' is a broad term to cover the various functions and the multifarious activities required for its efficient and effective functioning;

(ii) management consulting is not restricted, but is wide enough to include advisory services rendered on any aspect of management;

(iii) merger and acquisition are an important aspect of management of any organization today; and

(iv) advisory services including financial advisory services, for merger and acquisition clearly fall with in the realm of management consulting.

It is also stated by them that even though merger and acquisition is provided by a variety of agencies, known as investment banks/merchant banks, corporate finance/advisory services of commercial banks/financial institutions corporate finance/advisory services division of accounting/audit firms, specialized mergers and acquisition boutiques, strategy/general management consultants having differing organizational or ownership profile, such semantic differences in any way do not obliterate the basic nature of the services that clearly relate to *management of an organisation. Accordingly the financial advisors for merger and acquisition would come under the category of 'management consultant for the reasons that the services provided by them are clearly in connection with the management of any organization*

36. As above, taking into account all the above points, I am also is of a view that merger, acquisition and other form of restructuring of business organization have emerged as key element in the modern management and as the term 'management covers the various functions and the multifarious activities required for efficient and effective functioning of an organization, any advisory services rendered in merger and acquisition transaction are also includable under the taxable service rendered by management consultant. Accordingly, being provider of services, as discussed above are liable to held provider of taxable "Management or Business Consultant" services. It is further observed that, contrary to the claim of the party, the agencies providing only legal services as per the requirement of any statue or regulation such as Takeover Regulations of SEBI and if their role is limited to the compliance of such act or regulations and not governed by any contractual relationship with the advisee company then such services will not be covered under the scope of taxable "Management or Business Consultant Services" as defined under section 65(105) of Finance Act'1994 however the party have failed to substantiate their claim in this regard.

37. Thus from analysis of facts and evidences as discussed above, services provided to prospective customers to develop suitable organization for identifying business opportunities, professional expertise for merger & amalgamation including areas of finance or taxation etc. or services to develop suitable infrastructure for merger & amalgamation, acquisition and IPR protection are "Management or Business Consultant Services" as defined under section 65(105) of Finance Act'1994 liable for payment of service tax. Accordingly hold that that M/s FML were engaged in providing taxable services relating to Management or Business Consultant, were liable to pay service tax at the *applicable rates during the relevant period and in effect evaded the payment of Service Tax on taxable amount received by them during the period April'2007 to August2009.*

38. Now I consider the allegation of suppression suppressed the vital information by M/s FML from department as they never applied for service tax registration, never filed ST-3 returns and never made payment of service tax prior to 15.09.2009. I observe that the nonpayment of service tax was unearthed by department by causing investigation against them, hence, the proviso of Section 73(1) of Finance Act,1994 has been rightly invoked for extended period of limitation and the service tax amount as detailed in para appears to be recoverable from party. I further find that the party suppressed vital information with intent to escaped assessment of service tax and hence to evade payment of service tax. Since they had not paid service tax, they are also liable to pay, interest at appropriate rate, under the provisions of section 75 of Finance Act, 1994

39. In view of the facts narrated above, it appears that M/s FML had suppressed vital information from department during the relevant period and had not applied for registration and not filed service tax returns as required under the provisions of Finance Act, 1994. If the said inquiry had not been initiated by department, non payment of service tax by M/s FML would have gone unnoticed and a huge amount of service tax would have escaped the Govt. exchequer. Thus by omission and failure on the part of M/s FML, they are liable to imposition of penalty under section 78 of Finance Act, 1994. The penalty under section 76,ibid. is not invokable as they had held liable to penalty under section 78,ibid

40. further observe that despite being engaged in providing of taxable services, fail to pay service tax , fail to take registration in accordance with provision of section 69 ibid and Rules their under. Further they also failed to keep , maintain or retain books of account, failed to filed prescribed service tax return as provided under provision of Chapter V of Finance Act1994 hence they are liable to penalty as prescribed under section 77 (a) & (b), ibid.

41. The party further argued that the figures of the payment received in respect of "acquisition and merger service", which is the subject matter of show cause notice may kindly be worked out and provided to them as they. I observe that they have been issued the captioned notice to show cause and already supplied information in form of RUDs, specifically RUD-10 with respect to data sheet reflecting details of invoices tendered by themselves. Therefore, it is the party, not the department who have to provide details, if any of their activity or operational area is beyond the coverage of miscellaneous merger & amalgamation and acquisition services are not classifiable as "Management or Business Consultant Services' defined under section 65(105) of Finance Act'1994."

4.3 From the above it is evident that while considering the nature of the services provided by the appellant commissioner has referred to the brochure of the appellant wherein the nature of services provided by the appellant have been detailed. Undisputedly one of the category of services provided by the appellant as per their own brochure is in relation to merger and acquisitions. Taking into considerations the nature of services as detailed in the brochure and the clarification issued by the Board vide letter F.No. 177/2/2001-CX4, dated 27.06.2001 under Section 37- B Order No.1/1/2001-ST dated 27.06.2001, Commissioenr ahs conclude that the service provided by the appellant are appropriately classifiable under the category of Business and Management Consultant Services.

4.4 The same issue has been considered by the Chennai Bench in case of VSL India Private Limited [Service Tax Appeal No. 530 of 2012 Final 40164-40166/2023 Order dated 16.03.2023] and following has been held:

> *"15.3.1 Section 65 (65) defines "management or business consultant" to mean: -*
>
> *"(65) "management or business consultant" means any person who is engaged in providing any service, either directly or indirectly, in connection with the management of any*

organisation or business in any manner and includes any person who renders any advice, consultancy or technical assistance, in relation to financial management, human resources management, marketing management, production management, logistics management, procurement and management of information technology resources or other similar areas of management;"

15.3.2 C.B.E.C. Circular F. No. 177/2/2001-CX.4 [Section 37B Order No. 1/1/2001-ST] dated 27.06.2001 has clarified the scope of management consultant service. The relevant portion of the above Circular read as under: -

"7. In this regard, the Board had consulted the Indian Institute of Management, Ahmedabad for obtaining an expert opinion on the subject matter. They have opined that the term "Management" is generally understood to mean running the affair of an organisation in an organised and systematic manner. To be able to do this efficiently and effectively, management typically involves carrying out a host of activities, functions and tasks and at different levels. Thus management encompasses both strategic and operational level functioning and would include tasks such as planning, organising, staffing, directing, controlling and coordinating. Management also invariably involves designing organisational structure around functions such as marketing, manufacturing, research and development and finance and/or business area such as product groups or geographical markets. Thus management of any organisation involves carrying out a wide variety of clearly defined activities across a number of organisational sub-units in a coherent and coordinated manner. Since the expression "Management" is an inclusive term, 'management consultant' would also be equally encompassing expression and would include any adviser who renders services on any aspect of management. They have further opined that financial advisory services rendered in merger and acquisition transactions are clearly in the nature of services in connection with the management of an

organisation as merger and acquisition themselves are important dimension of modern management."

16.1 C.B.E.C. Circular F. No. 177/2/2001-CX.4 (supra) refers to the consultation of the Board with the Indian Institute of Management, Ahmedabad before issuing the Circular, through which the Board has clarified the scope of management consultant service and this has been specifically considered at paragraph 6.3 of the impugned order. A perusal of the scope of management consultant service, as clarified by the board, leads to the irresistible conclusion that "Management" is generally understood to mean as activities or services related to running the affairs of an organization/business; which typically involves carrying out a host of activities, functions and tasks and at different levels; including tasks such as planning, organising, staffing, directing, controlling and coordinating; management also involves designing organisational structure around functions like marketing, manufacturing, research and development and finance and/or business area such as product groups or geographical markets; management consultant would thus include any adviser who renders services on any aspect of management.

19. Having so concluded that the services in question do not constitute the services of a consulting engineer, the question remains as to whether these services constitute the services of a "management or business consultant." We have considered the interpretation placed upon the definition of the term "management or business consultant" employed in section 65(65) by the Board. From that interpretation, and from the words of the statute, what emerges is that the task of management extends to all those tasks that do not constitute the core business of the enterprise, and which do not fall under other specialisations. It appears to us that while no definition of the term "management" can be satisfactory, the best way to approach its construction would be negatively, i.e., by elimination. Section 65(65) too is worded widely enough to provide for this and covers financial management, human resources management, marketing management,

management of information technology resources and, the crucial residuary limb "other similar areas of management." In our opinion, all the services under the agreement we have referred to above will fall under one or the other of these limbs. There is some congruence, for example between "financial management" in the statutory definition and the financial services being rendered by the foreign entity. Similarly, marketing management brings advertising within its scope. Other services such as insurance and legal services will fall within the residuary limb, especially because these are not purported to be provided directly or with any professional expertise. It is not as if the foreign enterprise is itself an insurer or a lawyer. It appears that it will only make those services available to the Appellant.

20. In view of our above discussions, we have to agree with the conclusions drawn by the Ld. Commissioner in classifying the services received by the appellant under 'management or business consultant' service.

23. We now consider the contention as to issue involving interpretation, etc., for invoking the larger period and this appears to be genuine. This is because of the reason that there was a host of services received but there is also no doubt in our minds that a few of the activities could possibly be brought under consultant engineer services. The very fact that even the Board itself was not clear, for which reason an opinion was sought from the expert, namely, IIM Ahmedabad, fortifies the stand of the appellant that interpretation was involved. Thus, we hold that the appellant has made out a case for interference insofar as the invoking the larger period of limitation is concerned. Thus, we partly allow this ground of appeals insofar as they relate to the period of limitation. To ascertain, however, the tax liability for the normal period, this issue, to this extent, is remitted to the file of adjudicating authority.

25. In view of the above discussions, we hold as under:-

(i) ***With regard to the classification of service, the service involved has been correctly classified under 'management or business consultant' service.***

(ii) *With regard to includability of TDS, we hold that the appellant was correct in not including the TDS amount in the value of taxable services.*

(iii) *Insofar as revenue neutrality is concerned, we remit the matter back to the file of the Adjudicating Authority to examine if the appellant is entitled to avail CENVAT Credit and in this regard, we are guided by the ratio decidendi in M/s. Jay Yuhshin Ltd. (supra) and M/s. Star Industries Ltd. (supra).*

(iv) *With regard to the invocation of extended period, we hold that the Revenue has not justified, with adequate reasons, for invoking the extended period of limitation and hence, this grounds-of appeal are partly allowed and we hold that the tax has been correctly levied for the normal period."*

4.5 It is the claim of the appellant that the services provided by them are classifiable under the category of Legal Consultancy Service and they are paying the service tax on these services under that category from 01.09.2009 (Legal services became taxable from this date). To examine the claim of the appellant we reproduce below the definition of the said services as per Section 65 (105)(zzzzm) of the Finance Act, 1994.

"65(105) *taxable service means any service provided or to be provided, -*

(zzzzm) (i) to any person, by a business entity, in relation to advice, consultancy or assistance in any branch of law, in any manner;

(ii) to any business entity, by any person, in relation to representational services before any court, tribunal or authority;

(iii) to any business entity, by an arbitral tribunal, in respect of arbitration.

Explanation. — For the purposes of this item, the expressions arbitration and arbitral tribunal shall have the meanings respectively assigned to them in the Arbitration and Conciliation Act, 1996 (26 of 1996);"

From perusal of the above definition it is quite evident that the services which are sought to be covered under the said category are essentially in nature services in relation to representation, before the legal authorities or court or the services of arbitral tribunal in respect of arbitration. The services in relation to advice, consultancy or assistance in any branch of law, in any manner, are also covered under this category. Clarifying the scope of the said service following was clarified by the JS (TRU) vide his letter D.O. F. No.334/13/2009-TRU New Delhi, 6th July, 2009:-

"2.3 Legal Consultancy Service: As in the case of management consultancy or engineering consultancy service, any consultancy, advice or technical assistance provided in any discipline of law is proposed to be subjected to service tax. However, the tax would be limited to services provided by a business entity to another business entity. It has been defined that a business entity includes firms, associates, enterprises, companies etc. but does not include an individual. Thus, services provided by an individual advocate either to an individual or even to a business entity would be outside the scope of the taxable service. Similarly, the services provided by a corporate legal firm to an individual would also be outside the purview of taxable service. Any service of appearance before any court of law or any statutory authority would also be kept outside this levy."

4.6 From the brochure of the appellant which has been relied upon against the appellant it is evident that the services provided by the appellant include the services relating to Due Diligence, Risk Analysis and Management issues in addition to the services provided in relation to approval from the high court, documentation, permissions and approvals, tax issues and post clearing compliances. It is also evident from the brochure of that appellant itself has declared in their brochure stating "FML has varied experience in advising the clients on the method and extent of investment, methods of acquiring management control, representation on Board and management etc." This services cannot be in relation Legal Consultancy as defined by Section 65 (105) (zzzzm) and are appropriately classifiable under the category of Business and Management Consultancy Services.

4.7 From the brochure of the appellant it is evident that appellant is providing a vast category of services some of which may be classifiable under the category Legal Consultancy Services and hence the value of the said services has to be excluded while determining the demand for the period prior to 01.09.2009. While determining the quantum of service tax payable certain amounts have been excluded as per the show cause notice. However we do not find any submissions made by the appellant before the original authority in regards to the correctness of the exclusions made and also no determination made by the adjudicating authority in this regards. For the redetermination of the amounts which should be subjected to tax under the category of Business and Management Consultants the issue needs to be reconsidered by the original authority for the entire period of demand.

4.8 Appellant have claimed the services provided by them would be considered as the Export of Service as in the most of the case their clients are located abroad and they are receiving the consideration in convertible Foreign Exchange. They have placed reliance on Rule 3 (2) of the Export of Services Rules to buttress their claim. Relevant rule is reproduced as under:-

> "Rule 3: Export of Service"
> (1)………………
>
> (2) The provision of any taxable service specified in Sub-rule (1) shall be treated as export of service when the following conditions are satisfied namely:-
>
> (a) such service is provided from India and used outside India, and

(b) payment for such service is received by the service provider in convertible Foreign Exchange."

We do not find any such claim being made before the original authority. In absence of any such claim being made before the original authority we are not in position to entertain the same now as it is like making an all together new claim which was never made before the original authority. Hon'ble Supreme Court ahs in case of Larsen & Tubro [2015 (324) E.L.T. 646 (S.C.)] observed as follows:

"18. *We may point out at the outset that the case which is now sought to be set up by the assessee, namely, CM and RMC are one and the same product, was never the case of the assessee. On the contrary, in reply dated June 12, 1998 to the letter dated May 18, 1998 issued by the Assistant Commissioner of Central Excise, Anantpur, the explanation given by the assessee was that the product produced at the site is only concrete mix, which is different from RMC; and that RMC cannot be manufactured at the site of construction; that chemicals/retarders are not used in site mix concrete. Further, we also find from Order-in-original as well as order passed by the Tribunal that the assessee always accepted that what was being produced was RMC and claimed exemption only on the ground that it was manufactured at the site of construction and captively used."*

4.9 It is quite evident that the issue in regards to levy of tax under the category of Business and Management Consultancy Services on the services provided in relation to merger and acquisitions had been clarified by the Board as early as in 2001 vide the circular referred earlier. Once such a clarification, has been issued appellant cannot plead bonafide and nonpayment of tax on such activities cannot be said to be bonafide act but a clear case of contempt of the statutory provisions. Appellant have by suppressing the value of taxable service so rendered by not taking registration with the department have contravened various provisions of the Finance Act, 1994 as detailed earlier. Thus the we are of the opinion that extended period of limitation as per proviso to Section 73 (1) has been rightly invoked for making this demand.

4.10 Since the demand of tax is maintainable in the present case the demand of interest under Section 75 and the penalty imposed under Section 77 and Section 78 to are maintainable. Penalty under Section 78 needs to be re-determined after determining the quantum of tax payable in the remand proceedings.

4.11 During the course of argument appellant has relied upon certain decision which we do not find relevant for determining the issues in hand. Further appellant has while relying upon the said decision has not pointed out the reason for reliance upon the said decisions, hence we are not recording any finding on these decisions.

5.1 Appeal partly allowed and the matter remanded to the original authority for

(i) redetermination of the quantum of tax payable;
(ii) penalty under Section 78, on the basis of re-determined quantum of tax as per (i)

5.2 As the matter is substantially old the adjudicating authority should in remand proceedings decide the matter within three months of receipt of this order.

(Pronounced in open court on 06.06.2024)

(P. K. CHOUDHARY)
MEMBER (JUDICIAL)

(SANJIV SRIVASTAVA)
MEMBER (TECHNICAL)

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