CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL BANGALORE

REGIONAL BENCH - COURT NO. 2

Service Tax Appeal No. 979 of 2009

[Arising out of Order-in-Appeal No. 09/2009-ST (Commr.) dated 08.10.2009 passed by Commissioner of Central Excise, Customs and Service Tax, Thiruvananthapuram.]

Information Kerala Mission (IKM)
Pratheeksha, Near Govt Engineering College,
Pangappara P.O.
Thiruvananthapuram
Kerala - 695581. **......... Appellant(s)**

VERSUS

Commissioner of Central Excise, Customs & Service Tax, Trivandrum
ICE Bhavan, Press Club Road,
Trivandrum, Kerala - 695001. ….**....... Respondent**

WITH

i. Service Tax Appeal No. 4 of 2012 (M/s. Information Kerala Mission Vs. CCE)
[Arising out of Order-in-Original No. 07 to 09/2011 ST (COMMR.) dated 31.08.2011 passed by Commissioner of Central Excise, Customs and Service Tax, Thiruvananthapuram.]

ii. Service Tax Appeal No. 20789 of 2015 (M/s. Information Kerala Mission Vs. CCE)
[Arising out of Order-in-Original No. TVM-EXCUS-000-COM-43-14-15 dated 31.12.2014 passed by Commissioner of Central Excise, Customs and Service Tax, Thiruvananthapuram.]

iii. Service Tax Appeal No. 20141 of 2016 (M/s. Information Kerala Mission Vs. CCE)
[Arising out of Order-in-Original No. TVM-EXCUS-000-COM-31-15-16 dated 29.10.2015 passed by Commissioner of Central Excise, Customs and Service Tax, Thiruvananthapuram.]

iv. Service Tax Appeal No. 21146 of 2016 (CCE Vs. M/s. Information Kerala Mission)
[Arising out of Order-in- Appeal No. TVM-EXCUS-000-APP-328 & 329-16-16 dated 31.03.2016 passed by Commissioner (Appeals-Iii), Trivandrum.]

v. Service Tax Appeal No. 21147 of 2016 (CCE Vs. M/s. Information Kerala Mission (M/s. IKM))
(Arising out of Order-in-Appeal No. TVM-EXCUS-000-APP-328 & 329-15-16 dated 31.03.2016 passed by Commissioner (Appeals-III), Trivandrum).

Appearance:

Shri Manoj Pillai, Advocate for the Appellant
Shri M. A. Jithendra, Authorised Representative for the Respondent

CORAM:

Hon'ble P.A. Augustian, Member (Judicial)
Hon'ble Mr. Pullela Nageswara Rao, Member (Technical)

Final Order Nos. 21656-21661 /2024

Date Of Hearing: 12.06.2024

Date Of Decision: 11.12.2024

Per: P.A. Augustian

The issue in the present appeals is whether the Appellant being the Mission Group established as a part of a Special Central Assistance from Planning Commission, Government of India to provide Information Technology Services to Local Self Governments (LSGs) on a no profit no loss basis can be considered as exempted from payment of service tax as the functions are falling under the category of 'sovereign functions' and consideration is out of 'grants-in-aid'.

2. The brief facts are M/s. Information Kerala Mission (IKM), the Appellant was formed for the specific purpose of improving the computer networking of local bodies to district and state level offices, developing and deploying software for local body systems and for formulation and conduct of training program, etc. In order to carry out the activities, it was registered as an autonomous body under Travancore-Cochin Literary, Scientific and Charitable Societies Registration Act, 1955. The Appellant had launched extensive computerization program for implementation of the assigned task.

3. On scrutiny of the activities, it is observed that an amount of Rs. 450 lakhs were allotted as plan funds for implementation of the

project for the corresponding period. Alleging that the appellant is providing taxable services under the category of 'Management or Business Consultant' services, under section 65(105) (r) of the Finance Act, 1994, 4(four) show cause notices for the period 31.03.2004 to 31.03.2014 were issued for nonpayment of service tax. Further it is noticed that the appellant in some years has collected Service tax from LSGs and retained the amount of service tax so collected without depositing with the department. The Commissioner vide Order-in-Original No. 9/2009 dated 08.10.2009 confirmed the demand of Rs. 1,16,34,515/- along with the interest and imposed penalties under the provisions of the Finance Act, 1994, against this order the appellant filed Appeal No. ST/979/2009. Subsequently Order-in-Original Nos. 7 to 9/2011 dated 31.08.2011 was passed against the subsequent Show Cause Notices dated 20.04.2010, 13.10.2010 and 08.04.2011 confirming the demands along with the interest and imposed penalties under the provisions of the Finance Act, 1994 against this order the appellant filed an Appeal No. ST/04/2012. Further For the period 01.04.2012 to 01.03 2014 2(two) more periodical show cause notices were and the adjudicating authority has confirmed the service tax of Rs. 68,06,320/- and Rs. 68,32,167/-, respectively. In the meantime, another 2(two) Show Cause Notice Nos. 11/2013 dated 06.02.2013 and 79/2011 dated 12.10.2011 for the period 01.04.2011 to 01.03.2012 were issued and the Adjudication authority confirmed the service tax demand along with interest and imposed penalties. In one of the cases, the Adjudication Authority has taken the consideration as Rs. 250 lakhs, since the actual amount received by the appellant was only Rs. 250 lakhs out of Rs. 450 lakhs. Aggrieved by the said orders, both the

Department as well as the Appellant had filed appeals before the Commissioner (Appeals) and the Commissioner (Appeals) as per the Order-in-Appeal No. 328 and 329 dated 31.03.2016 held that since the Appellant is also a part of the Government of Kerala providing service to Government of Kerala itself, there is no service provider-client relationship and the activities are self-service and hence would not fall under the preview of service tax as it is not a taxable service. Aggrieved by the order of Commissioner (Appeals) department has filed appeals No. ST/21146/2016 and ST/21147/2016. Details of the Appeals filed by the Appellant and the Department are tabulated below:

Appellant's Appeals

Sl. No	Appeal No	SCN(S) Dated	Period	OIO No./ Dated	Amount Confirmed (in Rs.)	OIA
1	ST/979/2009	21.04.2009	31/03/2004 to 30/09/2008	OIO No. 9/2009-ST(Commr) 08/10/2009	1,16,34,515 paid 22,10,153	NA
2	ST/04/2012	20.04.2010 13.10.2010 08.04.2011	Oct 2008 to March 2009 April 2009 to Sept 2009 Oct 2009 to March 2010	OIO No. 07 to 09 -ST (Commr) 31/08/2011	1,22,43,068	NA
3	ST/20789/2015	16.05.2014	April 2012 to March 2013	31.12.2014	65,06,320	
4	ST/20141/2016	SCN No. 21/2015-ST (Commr.) 07.03.2015	April 2013 to March 2014	29.10.2015	Rs.68,32,167	

Departmental Appeals

1	ST/21146/ 2016	SCN Nos. 79/2011 & 11/2013 ST (ADC) 06.02.2013	April 2010 to March 2012	OIO 07&08/2013 24/05/2013	Confirmed Rs.72,10,000/-	OIA 328 & 329 Dated 31.03.2016. Upheld party's appeal and dismissed Department's appeal.

2	ST/21147/ 2016	SCN Nos. 79/2011& 11/2013 ST (ADC) 06.02.2013	April 2010 to March 2012	OIO 07&08/2013 24/05/2013	Confirmed Rs.45,35,000/- and dropped an amount of Rs.20,60,000/-	OIA 328 & 329 Dated 31.03.2016. Upheld party's appeal and dismissed Department's appeal.

Since the issue involved in all the 6(six) appeals is common they are being disposed by this order.

4. When the matter came up for hearing, the Ld. Counsel for the Appellant draws our attention to large number of communications made by the Appellant with Department and also the copy of the Government order based on which the Appellant was formed. Ld. Counsel for the Appellant also draws our attention to the bill issued by the Appellant on 28.02.2017, where the sale value and other costs were included. The Ld. Counsel further submits that for the training charges, Appellant had collected some amount by mistake from some of the Panchayats and paid the same through challan. The Ld. Counsel further draws our attention to the letter dated 09.05.2018, where the communication was made to the concerned officer of the respondent regarding the payment and submitted that as per the accounts maintained by them, they have collected Rs. 22,10,153/- as service tax and remitted the same through three challans. In support of the same, Ld. Counsel draws our attention to the invoice issued to Grama Panchayath on 28.02.2017, where it is clearly stating the details and as per the above, they have purchased the goods and software and in addition they have charged procurement charge of 5% and system integration charge of 5% amounting to Rs. 20170/- and paid service tax of Rs. 2469/-. The Ld. Counsel also draws our attention to the CBEC Circular No. 96/07/2007/ST dated

23.08.2007, where it is clarified that if activities assigned and performed by sovereign public authority under the provisions of any law as statutory duties and undertaken in public interest, they are not to be treated as service provided for a consideration. The Ld. Counsel also draws our attention to the letter dated 21.04.2008 issued by the Assistant Commissioner of Preventive, where it is specifically stated that though the Appellant have been functioning from the funds allotted by the Central and State Government at a specified charge @5% being charged and collected towards procurement charges and system integration charges separately. Thus, these charges are to be construed as the consideration for the services rendered to LSGs. As per the said communication, it is also admitted that the Appellant have paid entire amount of service charge, tax collected and retained to the tune of Rs. 20,60,325/- vide challan No. 00041 and 00043 dated 15.12.2007. Learned counsel submits that the consideration for assessing the Service Tax as per the impugned order is not based on any invoice issued by the appellant to the local bodies during the period, the respondent only adopted figures shown in the balance sheet and from the utilization statement prepared by the Auditors. Ld. Counsel also draws our attention to the decision of this Tribunal in the matter of **M/s APITCO, Ltd., Vs. CCE Hyderabad-2010 (20) STR 475 (Tri. Bang)**, wherein it is held that:-

> ***"6.*** *We have given careful consideration to the submissions. It is not in dispute that the assessee-company had implemented welfare schemes for the Central and State governments for the benefit of the poor or otherwise vulnerable/weaker sections of the society and collected grants-in-aid from the Governments concerned. It is not in dispute that these grants-in-aid had been totally utilized for implementing the welfare schemes. Nothing*

over and above these grants-in-aid was received by the assessee from any of the Governments. In other words, the assessee did not receive any consideration for "any service' to the governments. Therefore, we hold that, in the implementation of the Governmental schemes, the assessee as an implementing agency did not render any taxable "service" to the government. The department seems to be considering the Governments to be "clients" of APITCO.

The question now is whether there was "service provider-client" relationship between the appellant and the governments. Here, again, the nature of the amounts paid by the governments to the assessee is decisive. A client must not only pay the expenses of the service but also the consideration or reward for the service to the service provider. Admittedly, in the present case, there was no payment, by any government to the assessee, of any amount in excess of what is called "grant-in-aid". Thus, any service provider-client relationship between the assessee and the governments is ruled out. It is true that the assessee had executed the governmental schemes mainly through their engineers (technocrats) but this was not enough for the revenue to bring the assessee within the ambit of "scientific or technical consultancy" as clearly held by this Bench in the case of Administrative Staff college of India (supra). An organization rendering "scientific or technical consultancy" service under Section 65(105)(za) of the Finance Act 1994 must be a science or technology institution. The assessee-company has not been shown to be such an institution. Moreover, the revenue has failed to show that any scientific or technical advice or consultancy or assistance was rendered by the assessee to the governments. Many of the activities in question, such as micro-enterprises development, training programmes, project planning, infrastructure planning etc., are apparently in the nature of projects involving application of social science principles. The revenue has not shown that any techniques or principles of pure and applied sciences were applied in the implementation of the governmental schemes by the assessee. In the case of

Administrative Staff College of India (supra), this Bench held that, as the research activities of the assessee (Administrative Staff College) were related to social science, they would not be within the ambit of "scientific or technical consultancy" and hence no service tax could be levied under that category, which view is squarely applicable to the facts of the present case. The view taken by the Tribunal in the above case stood affirmed by the Apex Court in the above case with the dismissal of the department's Civil Appeal filed against the Tribunal's Order."

5. Ld. Counsel for the Appellant also relied on the decision of the Tribunal in the matter of **M/s MB Water and Land Management Institute Vs. CCE- 2007 (8) STR 607 (Tri. Del),** wherein it is held that:

"Applicant being a Government Department giving training to officials in respect of water and land management, hence cannot be said to have provided consultancy services".

6. Ld. Counsel also relied on the Judgments/decisions in following matters:-

a. **CCE. Vs. M/s. Ankit Consultancy -2007 (6) STR 101**
b. **Re Centre for Multi disciplinary Development-2008 (12) STR (654)**
c. **National Productivity Council Vs. CCE -2008 (12) STR (491)**
d. **CCE. Vs. M/s. Bharateya Samurddhi Investments--2007 (7) STR 60.**

7. As regards the allegation of rendering taxable service of commercial training and coaching, the Ld. Counsel submits that there is no such activity undertaken by the Appellant. Imparting in-house training by Department experts of any field to their own staff is not commercial coaching or training in order to attract levy of service tax. Further as per the Circular No. 59/8/2003 dated 26.06.2003, if

employees are hired from outside for extending commercial coaching or training for imparting training to their employees, then only tax liability would arise.

8. As regards delayed payment, the Ld. Counsel admits that they have inadvertently collected Rs.21,68,272/- with education cess and SHE cess. However, due to dispute regarding the liability, it was kept in a suspense account of treasury and remitted the same as directed by the Excise Department. In fact, the Appellant had remitted an amount of Rs. 99,760/- which is in excess then what is collected by the appellant.

9. As regards invoking the extended period of limitation and penalty, the Ld. Counsel submits that there is no reason or justification to allege suppression of fact to invoke the extended period of limitation and the Ld. Counsel relied on the decision of the Hon’ble High Court of Kerala in the matter of **M/s. Thomas Philips Vs. Assistant Registrar - 2005 (3) K.L.T (387).** The Ld. Counsel also relied on the decision of the Hon'ble Apex Court in the matter of M**/s Pushpam Pharmaceutical Vs. CCE -1995 (78) E.L.T (401).**

10. Ld. Authorised Representative (AR) for Revenue reiterated the submissions in the impugned order and further submits that though it is an admitted fact that Appellant body is established by a Government Order it does not preclude it from having a service provider-client relationship. The Appellant had carried out many activities having essential character of a service provided under the 'Management consultant' service. This Tribunal in the matter of **M/s. APITCO, Ltd., Vs. CST Hyderabad- 2010 (20) STR 475 (Tri. Bang),** held that the activities were welfare activities and the Appellant M/s. APITCO has not

received any consideration apart from grant-in-aid. However, in the present case, they have collected some amount towards procurement charges in addition to Grant-in-aid. Further submitted that the Circular No. 89/7/2006 dated 18.12.2006 relied by the Appellant is not applicable in the present case as it is only applicable to the statutory functions carried out by the Government agencies. Ld. AR also produced the chart and submits that for the year from 2004 to 2006, they have collected an amount of Rs. 43,19,710/- and the same was not paid to the Department and they are liable to pay the same. Ld. AR also draws our attention to the judgment of the Hon'ble Supreme Court in the matter of **M/s. Krishi Upajmandi Samathi Vs. CC, Alwar -2022 (58) GSTL 129 (SC)** and submits that merely because such consideration is deposited in treasury, does not mean that it has become Government money.

11. Heard both sides and perused the records.

12. We have gone through the submission made by both the appellant and the Respondent. It is an admitted fact that the Appellant was established as part of a Special Central Assistance from the Planning Commission, Government of India to provide information technology services to Local Self-Government (LSGs) on a no loss no profit basis. As part of the activity, the Appellant had carried out networking and provided the services of computer software. Further they assisted LSGs in implementing the e-Governance but not provided any expert advice in management of LSGs. Appellant was doing proactive valuation of existing system of governance and device strategy for effective decentralized planning and make the administration more citizen friendly and such activities are part of the

sovereign function to be performed by State as well as Local Self Governments.

13. Thus, the activities carried out by the Appellant cannot be considered as taxable service, but it is only a part of a sovereign function. It is a case where implementation of e-Governance project is implemented by the State Government through a Special Purpose Vehicle (SPV) and the same cannot be considered to be an activity where there is a service recipient-service provider relation to demand service tax. Moreover, the issue is also covered by the Circular No. 89/7/2006-ST dated 18.12.2006 (5), where it is specifically held that activities performed by a sovereign body/public authority under the provisions of law are in the nature of statutory obligations, which are to be fulfilled in accordance with law. Such activities are purely in public interest, and they are undertaken as part of administration of local self bodies to perform the mandatory and statutory functions. Regarding non-payment of service tax of Rs. 43,19,710/- allegedly collected by the appellant and not paid to the Department, there is no evidence to support the said figure, whereas as per the communication made by the appellant with Revenue, they have inadvertently collected Rs.21,68,272/- with education cess and SHE cess. However, due to dispute regarding the liability, it was kept in a suspense account of treasury and remitted the same as directed by the Department. In fact, the Appellant is claiming that they had remitted an amount of Rs. 99,760/- in excess of what was collected by the appellant. However, for assessing the Service Tax, the consideration is not based on any invoice issued by the appellant to the local bodies during the period,

respondent only adopted the figure shown in the balance sheet and from the utilization statement prepared by the appellant's Auditors.

14. In view of the above discussion and in the facts and circumstances of the case the Appeals No. ST/979/2009, ST/4/2012, ST/20789/2015 and ST/20141/2016 filed by the appellant are sustainable and need to be allowed and and we do so. The appeals ST/21146/2016 and ST/21147/2016 filed by the Revenue are unsustainable and are liable to be dismissed.

15. Accordingly, Appeal Nos. ST/979/2009, ST/4/2012, ST/20789/2015 and ST/20141/2016 are allowed with consequential relief, if any in accordance with law. The Appeal Nos. ST/21146/2016 and ST/21147/2016 filed by the Revenue are dismissed.

(Order pronounced in open court on 11.12.2024)

(P.A. Augustian)
Member (Judicial)

(Pullela Nageswara Rao)
Member (Technical)

sasidhar