

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL  
BANGALORE**

REGIONAL BENCH - COURT NO. 1

**Service Tax Appeal No. 2539 of 2012**

[Arising out of Order-in-Original No. 71/2012 dated  
30/05/2012 passed by the Commissioner of Service Tax,  
Bangalore.]

**M/s. RELIGARE TECHNOVA  
GLOBAL SOLUTIONS LTD.  
(Now known as Dion Global  
Solution Limited)**

B-7, 17<sup>TH</sup> MAIN KHB COLONY,  
5<sup>TH</sup> BLOCK, KORAMANGALA LAYOUT,  
BANGALORE - 560 066

Appellant(s)

*VERSUS*

**Commissioner of SERVICE TAX- I**

1ST TO 5TH FLOOR,  
TTMC BUILDING, above BMTC BUS  
STAND,DOMLUR  
BANGALORE - 560 071.  
KARNATAKA

Respondent(s)

**Appearance:**

**Mr. Syed Khamnuddin, Advocate**

KNS Legal  
No. 11/03-5, 2nd Floor,  
Palace Loop Road,  
Bangalore - 560 052.  
Karnataka

For the Appellant

**Smt. D. Sangeetha,  
Joint Commissioner (AR)**

For the Respondent

Date of Hearing: 09/11/2020

Date of Decision: 24/11/2020

**CORAM:**

**HON'BLE SHRI S.S GARG, JUDICIAL MEMBER  
HON'BLE SHRI P. ANJANI KUMAR, TECHNICAL MEMBER**

**Final Order No. 20826 / 2020**

**Per : S.S GARG**

The present appeal is directed against the Order-in-Original No. 71/2012 dated 30.5.2012 passed by the Commissioner of Service Tax, Bangalore whereby the Commissioner has confirmed the following demands.

- (i) Confirmed an amount of Rs.3,54,54,363/- payable as service tax payable for the services provided by the appellants under Section 73(2) read with proviso to Section 73(1) of the Finance Act, 1994.
- (ii) Ordered payment of interest at the rate applicable under Section 75 of the Finance Act, 1994.
- (iii) Imposed penalty equivalent to the tax amount demanded under Section 78 of the Finance Act, 1994.
- (iv) Imposed penalties under Section 76 @ Rs.100/- per day up to 17.4.2006 and @ Rs.200/- per day or @ 2% of service tax per month from 18.4.2006 up to 10.5.2008; and
- (v) Imposed penalty of Rs.5,000/- under Section 77 of the Finance Act, 1994.

2. Briefly the facts of the present case are that the appellants are developer of an internet based trading software 'Trade Anywhere' and licensing the same to its customers who are primarily share broking houses / financial institutions / banks and media portals. The appellant for providing such software license, has entered into Software License Agreements with various share broking houses, etc. For licensing of software, appellants are collecting charges termed as 'license fee' and on this value they are collecting and discharging CST @ 4% for interstate sales and excise duty. The department entertained the view that the appellants are liable to pay service tax under Management or Business Consultant Service as provided in Finance Act, 1994 but are not paying the same and has also not informed the department about non-payment of service tax on Management or Business Consultant Service. Department, thereafter, on 8.4.2011 issued a show-cause notice to the appellant on the following allegations.

- (i) The appellant had carried out various activities like modification and customization of software, install the software for use on the equipment for trading, providing support through remote access using the internet as a medium, sending engineers to the site of customers, provide additional training required by the customer from time to time.
- (ii) The software so implemented is used by the customers for the purpose of automated trading systems that protects the interest of security market participants from the risks they are exposed to on one hand and keeping their operational costs low on the other. The above activities carried out by the assessee covers under Enterprise Resource Planning Software Applications and the same is rightly classifiable under the category of Management or Business Consultant Services.
- (iii) That during the period 1.3.2006 to 15.5.2008, the appellant has received an amount of Rs.28,84,88,133/- towards the above service and the service tax liability on the above works out to Rs.3,54,54,363/-.
- (iv) That the fact of non-payment of service tax would not have come to the notice of the department but for audit's observation. Further, the appellant have not intimated to the department the above facts in any manner at any point of time. The appellant have not sought any clarification from the department thereby suppressing the facts with an intention to evade payment of service tax and hence, extended period prescribed under Section 73(1) of the Act appears to be invokable for recovery of service tax not paid / evaded by the appellant.
- (v) Further, in view of the above contraventions, the appellant appears to have rendered themselves liable for penal action under the provisions of Section 76, Section 77 and Section 78

of the Act, apart from payment of interest under the provisions of Section 75 of the Act.

3. Appellant filed detailed reply to the show-cause notice praying that proceedings be dropped as the appellants are not liable to pay service tax under the category of Management or Business Consultant Service. After following the due process, the learned Commissioner rejected the contentions of the appellant and confirmed the demand in the impugned order dated 30.5.2012. Hence, the present appeal.

4. Heard both sides and perused the records.

5. The learned Counsel for the appellant submitted that the impugned order is not sustainable in law as the same has been passed without properly appreciating the facts involved in the case and without considering the precedent decisions of this Tribunal and the higher courts. He further submitted that as regard 'Trade Anywhere' software, they are not undertaking any consultancy work. The skill required and the service provided are in the field of engineering rather than in the field of trading or finance. The appellant's software and the related services are to be treated as a product in the field of engineer notwithstanding any inputs that might have been taken from other domain groups. He further submitted that the respondent has failed to establish that the appellant's customers were receiving any advice / consultation from the appellants in the areas of management. In fact, according to the learned counsel, the department has not verified from any customers of the appellant as to what kind of advice if any are being received by them from the appellant.

6. The learned counsel further submitted that Information Technology Software Service was specifically made taxable under Information Technology Software Service only from 16.5.2008 and the disputed period in this case is prior to 16.5.2008 and therefore, no service tax could be demanded during the period prior to 16.5.2008. In support of these submissions, the learned counsel has relied upon the following decisions:

- Intelligroup Asia (P) Ltd. vs. Commissioner of Central Excise, Hyderabad: [2012] 22 Taxmann.com 280 (Bang.-CESTAT)

- Tata Technologies Ltd. vs. Commissioner of Central Excise, Pune: [2015] 62 Taxmann.com 368 (Mumbai-CESTAT)
- IBM India vs. Commissioner of Service Tax, Bangalore: [2009] 23 STT 338 (Bang.-CESTAT) maintained by Hon'ble Supreme Court in Commissioner vs. IBM Pvt. Ltd. reported in 2010 (18) STR J137 (SC).

7. He further submitted that the ratio of the decisions cited supra are clearly applicable in the facts of the present case and as per the ratio of these decisions, appellants are not liable to pay service tax under the category of Management or Business Consultant Service. Learned counsel also submitted that the demand in the present case is entirely barred by limitation. He further submitted that the period covered by the show-cause notice is from March 2006 to May 2008 whereas show-cause notice is dated 8.4.2011 and the show-cause notice has invoked extended period of limitation on the ground that the appellant has suppressed the fact with an intention to evade payment of service tax. He also submitted that there was no suppression from the appellant's side and the appellants were under a bona fide belief that they were not liable to pay service tax. Moreover, the department was aware of the activities undertaken by the appellant since audit was conducted in December 2009 and no such objection was raised by the department. In support of his submission, he relied upon the decision in the case of Commissioner of Central Excise, Indore vs. Syncom Formulation (I) Ltd. reported in 2004 (172) ELT 77 (Tri.-Del.). Learned counsel also submitted that as far as interest and penalty is concerned, when appellant is not liable to pay service tax, the question of interest and penalty does not arise.

8. On the other hand, the learned Authorised Representative (AR) has reiterated the findings of the impugned order.

9. Before we proceed to examine the question involved the present case, it would be appropriate to take note of the relevant provisions of Finance Act, 1994 relating to the taxable services of Management or Business Consultant Service and Information Technology Software Service.

65(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 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];

[65(53a) **"information technology software"** means any representation of instructions, data, sound or image, including source code and object code, recorded in a machine readable form, and capable of being manipulated or providing interactivity to a user, by means of computer or an automatic data processing machine or any other device or equipment;]

[65(105)(zzzzz) to any person by any other person in relation to information technology software for use in the course, or furtherance, of business or commerce, including-

- (i) Development of information technology software,
- (ii) Study, analysis, design and programming of information technology software,
- (iii) Adaptation, upgradation, enhancement, implementation and other similar services related to information technology software,
- (iv) Providing advice, consultancy and assistance on matters related to information technology software, including conducting feasibility studies on implementation of a system, specifications for a database design, guidance and assistance during the start-up phase of a new system, specifications to secure a database, advice on proprietary information technology software,

- (v) *[providing] the right to use information technology software for commercial exploitation including right to reproduce, distribute and sell information technology software and right to use software components for the creation of and inclusion in other information technology software products,*
- (vi) *[providing] the right to use information technology software supplied electronically;*

10. Further, we note that the only issue involved in the present case is whether the services rendered by the appellant as per their agreement with their customers fall in the definition of taxable services of Management or Consultant Service as alleged by the department or it falls under the definition of Information Technology Software Service as claimed by the appellant. Here, it is pertinent to reproduce the relevant findings of the learned Commissioner recorded in para 43 of the impugned order as under:

*"43. It is alleged in the show-cause notice that the service provider has carried out various activities like modification and customization of software, installing the software for use on the equipment for trading, providing support through remote access using the internet as a medium, sending the engineers to the site of customers, providing additional training required by the customer from time to time. The assessee also conducts acceptance tests to verify the fulfillment of the requirement specification of the Licensed programme and issue an acceptance certificate. The software so implemented is used by the customers for the purposes of automated trading systems that protects the interest of security market participants from the risks they are exposed to on one hand and keeping their operational costs low on the other. Trade is the baseline product for trading facility helps in controlling their risk centrally, optimizing their costs by providing and extremely flexible and scalable solution, handle huge customer base, etc. These activities carried out by the assessee were covered under Enterprise Resource Planning Software applications and the same was*

*rightly classifiable under the category of Management or Business Consultant Service and are liable for service tax."*

11. From the findings recorded hereinabove, the learned Commissioner after examining the services rendered by the appellant has come to the conclusion that the activities carried out by the appellant are covered under the category of Enterprise Resource Planning (ERP) Software Application and the same are rightly classifiable under the category of Management or Business Consultant service and are liable for service tax. Now the issue arises as to whether Enterprise Resource Planning implementation service would fall under Management or Business Consultant Service or Information Technology Software Service. After carefully considering the definition of Management or Business Consultant Service and Information Technology Software Service cited *supra*, we are of the view that Enterprise Resource Planning implementation would not be covered under Management or Business Consultant service due to the following reasons:

- (a) The services are not in connection with the management of an organization.
- (b) The services would not be covered under the inclusive part of the definition (i.e., advice, consultancy or technical assistance with regard to specific activities).
- (c) Services provided by the appellant are executor in nature and hence do not fall under 'Management Consultant Services'.
- (d) Although the ERP software *per se* may be capable of enhancement of competitive capabilities of the customer's systems, by integrating various business functions, its implementation into the system cannot be treated as 'management consultant's service'.

The following judicial precedents have categorically held that software implementation service would not be covered under "Management Consultancy Services".

| <b>Case Law</b>                                                                                                        | <b>Nature of Services</b>              | <b>Period</b>                      |
|------------------------------------------------------------------------------------------------------------------------|----------------------------------------|------------------------------------|
| CCE, Mumbai-IV vs. AISCO Engineering Pvt. Ltd.: 2006 (1) STR 324 (Tri.)                                                | Implementation of the software package | Appeals to be (sic) 2008-09        |
| SAP India System, Applications & Products in Data Processing (P) Ltd. vs. CCE: 2006 (1) STR 152 (Tri.-Chennai)         | Implementation of the software package | July 7, 1997 to February 27, 1999  |
| SAP India System, Applications & Products in Data Processing (P) Ltd. vs. CST Bangalore: 2007 (5) STR 439 (Tri.-Bang.) | Implementation of software package     | October 16, 1998 to March 31, 2000 |
| SAP India System, Applications & Products in Data Processing (P) Ltd. vs. CCE:                                         | Implementation of software package     | Post April 1, 2000                 |

12. Further, we find that as per the terms of the Agreement entered into between the appellant and their clients, the activities undertaken by the appellant are covered under the definition of Information Technology Software Service as specifically covered under the Information Technology Services as taxable under Section 65(105)(zzzz) with effect from 16.5.2008. Further, the activities alleged in the show-cause notice clearly fall within the ambit of Information Technology Software Service as defined in the Finance Act, 1994. It is settled law that introduction of a new entry implies that services were not taxable earlier as held in the following cases:-

- (a) BCCI vs. CST: 2007 (7) STR 384 (Tri.-Mumbai)**
- (b) Glaxo Pharmaceuticals: 2006 (7) STR 711 (Tri.-Mumbai)**
- (c) CCE vs. MRF Ltd.: 2004 (179) ELT 472 (Tri.-Chennai)**
- (d) Kaveri Telecom Products Ltd.: 2006 (1) STR 226**

13. Further, we find that the issue involved in the present case is no more *res integra* and has been settled by various decisions of the Tribunal and the apex court as cited in para 6 above. In this regard, it is pertinent to mention that this Tribunal in the case of **IBM India Pvt. Ltd.** cited supra has specifically held that implementation of Enterprise Resource Planning does not attract service tax under the category of Management or Business

Consultant Service. The relevant findings are recorded in para 6 and 7, which is reproduced herein below:

*"6. We have carefully gone through the records of the case. The point at issue is the leviability to Service Tax under the category of 'management consultancy service' in respect of the ERP implementation services. It is seen that the Department attempted to classify the ERP services under 'management consultancy service' earlier and the Tribunal's decisions categorically held that during those time, the said services would fall under the category of consulting engineering services, however, they were excluded from the scope of consulting engineering services by virtue of initially an exemption Notification 4/99-S.T., dated 28-2-1999 initially and later by excluding it from the scope of 'consulting engineering services' in the definition itself. Once a particular service is excluded from the scope of service tax where it normally is supposed to fall then it cannot be taxed under some other category. This principle has been followed in the case laws of Federal Bank. Ltd. and also Lal Pathlabs Ludhiana, Collection Centre cases which have been cited earlier. However, w.e.f. 16-5-2008, information technology service was introduced. The definition of information technology service is*

*"any service provided or to be provided to any person in relation to information technology software for use in the course, or furtherance, of business or commerce, including.*

- (i) development of information technology software,*
- (ii) study, analysis, design and programming of information technology software,*
- (iii) adaptation, up gradation, enhancement, implementation and other similar services related to information technology software,*
- (iv) providing advice, consultancy and assistance on matters related to information technology software, including conducting feasibility studies on the implementation of a system, specifications for a database design guidance and assistance during the start-up phase of a new system, specifications to secure a database, advice on proprietary information technology software,*
- (v) acquiring the right to use information technology software for commercial exploitation including right to reproduce, distribute and sell information technology software and right to use software components for the creation of and inclusion in other information technology software products.*

(vi) *Acquiring the right to use information technology software supplied electronically."*

**7.** *In the present case, the ERP implementation service is definitely for use in furtherance of business and commerce and the service under dispute is for the implementation. So, implementation of the ERP services is specifically covered under the information technology service, which was effective only from 16-5-2008. Under these circumstances, it cannot be liable to Service Tax for a period prior to that. In the present case, the entire period is prior to 16-5-2008. The appellants have clearly shown that prior to 16-5-2008, even the services rendered by the appellant were excluded from the scope of consulting engineer's service and also the judicial pronouncements made it clear that they would not be covered under the management consultancy services. In view of these, there is no merit in the demands confirming the Service Tax of the services under the category of management consultancy services for the period prior to 16-5-2008. It should be borne in mind that the appellants have already been paying the Service Tax for ERP Planning and advice under the category of management consultancy service. Hence, the impugned orders have not merit. We set aside the same and allow the appeals with consequential relief."*

14. The decision of the Tribunal in the case of IBM India Pvt. Ltd. cited supra has been upheld by the apex court by dismissing the appeal of the department as reported at 2010 (18) STR J137 (SC). Hence, by following the ratio of the above decisions, we hold that appellants are not liable to pay service tax during the disputed period under the category of Management or Business Consultant Service.

15. Coming to the contention of the appellant that the entire demand is barred by limitation, we note that the period involved in the present case is from 1.3.2006 to 15.5.2008 whereas the show-cause notice was issued on 8.4.2011 by invoking the extended period of limitation alleging suppression of facts with intent to evade payment of tax by the appellant. In this regard, we find that the appellant has been regularly filing the returns and was under bona fide belief that their activities are not liable to service tax under Management or Business Consultant Service. It is not disputed that the appellant is paying service tax with effect from 16.5.2008 under the category of Information Technology Software Service. Moreover, the department was very much aware of the activities of the appellant as the

department conducted audit of the accounts of the appellant from time to time and the last audit was conducted in December 2009 but has not raised any objections regarding the activities of the appellant, hence, allegation of suppression of material facts against the appellant is not sustainable and we hold that entire demand is time barred.

16. In the result, the appeal is allowed on merits as well as on limitation with consequential relief, if any.

(Order was pronounced in Open Court on **24/11/2020.**)

**(S.S GARG)**  
**JUDICIAL MEMBER**

**(P. ANJANI KUMAR)**  
**TECHNICAL MEMBER**

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