CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHANDIGARH

REGIONAL BENCH - COURT NO. I

Service Tax Appeal No. 184 of 2012

[Arising out of Order-in-Original No. 20/AKM/CST(Adj.)/2011 dated 31.10.2011 passed by the Commissioner(Adj.) Service Tax, New Delhi]

M/s B S R and Co. **......Appellant**
Mr. Girraj Shallya, Building No.10,
8th Floor, DLF Cyber City, Phase-II,
Gurgraon, Haryana-122003

VERSUS

Commissioner of Service Tax, Delhi **......Respondent**
17- B.I.A.E.A House, M.G Road, I.P. Estate,
New Delhi-110002

WITH

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APPEARANCE:

Ms. Krati Singh and Ms. Samiksha Uniyal, Advocates for the Appellant

Shri Siddharth Jaiswal, Shri Aneesh Dewan and Shri Yashpal Singh, Authorized Representatives for the Respondent

CORAM: HON'BLE MR. S. S. GARG, MEMBER (JUDICIAL)
HON'BLE MR. P. ANJANI KUMAR, MEMBER (TECHNICAL)

FINAL ORDER NO.60112-60113/2025

DATE OF HEARING: 28.01.2025
DATE OF DECISION: 28.01.2025

P. ANJANI KUMAR:

The appellants, M/s BSR & Co. (ST/184/2012) and M/s BSR & Associates (ST/185/2012) are engaged in providing services, as a Chartered Accountant Firm, in the form of tax compliance, Representational Services, Audit etc; on the basis of the investigations conducted, a Show Cause Notice 23.04.2008 was issued to the appellants demanding service tax of Rs.5,71,04,507/- under Management Consultancy Service for the period 01.10.2002 to 31.03.2007; demanding service tax on out of pocket expenses of Rs.1,12,55,083/- + Rs.8,07,142/- (ST/185/2012) for the period 01.10.2002 to 18.04.2006; and demanding of service tax of Rs.1,18,85,704/- on export of services; the same was adjudicated vide Order No.3110/2011 dated 31.10.2011 confirming the duty demanded along with interest and penalties. Hence, these appeals.

2. Ms. Krati Singh, learned Counsel for the appellants submits that the appellants are engaged in execution of the work and not mere consultancy and advice and therefore, cannot be taxed under the Head "Management Consultancy Services"; she submits that CESTAT,

New Delhi in the case of appellants' themselves decided the issue, 2014 (8) TMI 227, in favour of the appellants holding that only the services in the nature of providing consultancy or advice for improving the business will be covered by the definition of "Management Consultancy Services" and not executionary type of services; Revenue challenged the order before Hon'ble High Court, who dismissed the appeal for lack of jurisdiction; an appeal filed by the Department before Hon'ble Apex Court was withdrawn on monetary limits. She submits that Department cannot take a different stand in this case. She also submits that the issue has been clarified that Management Consultancy Services include only the advisory services and not the actual performance functions. She further submits that Notification No.59/1998-ST dated 16.10.1998 exempts most of the activities carried out by Chartered Accountants from the levy of service during the period 01.10.2002 to 01.03.2006 and Notification No.25/2006-ST dated 13.07.2006 for the period 13.04.2006 to 31.03.2007. She relies on the following:

- Letter F.No. 341/21/99-TRU dated 20.08.1999
- Circular No. 115/9/2009-ST dated 31.07.2009
- Ernst & Young (P.) Ltd. vs. Commissioner of Service Tax, New Delhi, 2012 (7) TMI 667 - CESTAT, New Delhi
- M/s. Lakshmi Automatic Loom Works Ltd. vs Commissioner of Central Excise, Chennai, 2007-TIOL-1301-CESTAT-MAD
- Roots Multiclean Ltd vs Commissioner Of Central Excise, Coimbatore, 2005-TIOL-1619-CESTAT-MAD
- CCE v. Sundaram Finance Ltd, 2007 (7) S. T.R. 55
- Glaxo Smithkline Pharmaceuticals Ltd. Versus Commr. Of S.T., Mumbai-I 2014 (36) S.T.R. 349 (Tri. - Mumbai)
- M/S Paradeep Phosphates Ltd. Versus Commissioner Of Central Excise, Customs &

Service Tax, Bhubaneswar 2022 (8) TMI 541 CESTAT Kolkata
- Asian Hotels Ltd. v. Commissioner - 2019 (30) G.S.T.L. J141 (Tri. - Del.)] BSR. & CO. vs. Commissioner of Service Tax, Gurgaon, 2014 (8) TMI227-CESTAT New Delhi
- M/s Deloitte Haskins & Sells vs. The Commissioner, C&ST, Ahmedabad, 2014 (12) TMI 43 - CESTAT Ahmedabad

3. On the demand of service tax on export of services, she submits that the services were provided by the appellant no.1 to the clients located outside India; report in furtherance of execution of such services was being sent outside India only; Tribunal in the case of B A Research India Ltd. – 2010 (18) STR 439 (Tri. Ahm.) held that destination of any service has to be decided based on the place of consumption of service and not on the basis of the place of performance. She also relies on the following cases:

- Cox & Kings India Ltd. Vs. Comm. Of ST, Delhi 2014(35) STR 817 (Tri. Del.) affirmed by the Hon'ble Supreme Court in 2015(39) STR J308 (SC)
- M/s Grey Worldwide (India) Pvt Ltd Versus Commissioner of Service Tax, Mumbai, 2015 (10) TMI 56 - CESTAT Mumbai
- Bayer Bio Science Pvt Ltd Versus CCE & ST, Hyderabad - II 2019 (25) G. S. T. L. 230 (Tri. - Hyd.)

4. Learned Counsel submits that the appellants incurred out of pocket expenditure on behalf of the clients; the same was recovered on actual basis; for the period prior to 18.04.2006, the appellants were not liable to pay service tax on the OPE; after the amendment in Section 67 of the Act and introduction of Service Tax (Determination of Value) Rules, 2006, the appellants paid service tax

on such OPE in accordance with Rule 5(1) of the Valuation Rules; the issue is no longer *res integra* in view of the Hon'ble Delhi High Court's decision in the case of M/s Intercontinental Consultants and Technocrats – 2013 (29) STR 9 (Del.) [affirmed by Hon'ble Apex Court 2018 (10) GSTL 401 (SC)], the issue of inclusion of reimbursement is no longer *res integra*. She further relies on the following cases:

- C.B.R.E. South Asia Pvt. Ltd. vs. C.C.E. & S.T. Adjudication, New Delhi, 2021 (51) G.S.T.L. 325 (Tri. - Del.), affirmed in 2021 (53) G.S.T.L. J60 (S.C.)]
- Indian Institute for Production Management vs. Commr. OF C. Ex., CUS. & S.T., BBSR-II, Orissa, 2021 (46) G.S.T.L. 55 (Tri. - Kolkata)
- Smt. Ritu Arora Versus CCE & S.T. Ludhiana, 2023 (11) TMI 1130 -CESTAT Chandigarh
- Reliance Industries Ltd. vs. CCE, 2008 (12) STR 345, maintained in 2011 (23) STR J226 (SC)
- Frankfinn Aviation Services Pvt. Ltd. vs. Commr. of S.T., New Delhi, 2017 (5) G.S.T.L. 154 (Tri. - Del.) affirmed in 2018 (16) G.S.T.L. J171 (S.C.)
- M/S Confederation of Indian Industry Versus Commissioner of Central Excise & Service Tax, Chandigarh-1 2023 (7) TMI 57 Chandigarh

5. Learned Counsel for the appellants submits also that extended period is not invocable as there was no suppression of facts etc. on the part of the appellants; penalty is not imposable and cum-duty benefit is available to the appellants. She relies on the following cases:

- Commissioner Of Central Excise and Service Tax, Udaipur Versus M/S Kk Gupta Construction (Vice-Versa) 2024 (30) TMI 801 CESTAT New Delhi
- Balkrishna Industries Ltd. vs. Commissioner of Central Excise, Alwar, 2021(4) TMI 121, CESTAT New Delhi

- CCE vs. First Flight Courier Ltd., 2011 (1) TMI 52 - Punjab and Haryana High Court
- Commissioner Of Central Excise vs. M/s. Pannu Property Dealers, Ludhiana, 2010 (7) TMI 255 - Punjab and Haryana High Court

6. Learned Authorized Representative for the Department reiterates the findings of the impugned order.

7. Heard both sides and perused the records of the case and the case laws relied upon. We find that as far as the leviability of tax on actual performance of management activities is concerned, the Tribunal in the case of appellant's themselves finds that:

> **4.** We do not see any reason why representational work exempted from tax under Notification No. 25/2006-S.T. should be classified under Management Consultant Service and taxed. Though this issue was raised both before the adjudicating authority and the first appellate authority, both the authorities chose to ignore the contention and went by the argument that such services are classifiable under Management or Business Consultancy Service.
>
> **5.** The Tribunal has been holding that only services in the nature of providing consultancy or advices for improving the Management of a business entity only will be covered by the definition and not executory type of responsibilities of management got done through another agency. For example, collection of bad debts is a responsibility of a Management. If somebody is engaged for collecting bad debts the person engaged cannot be considered to be providing Management or Business Consultancy Services. Though the definition at Section 65(65) includes any service in connection with management of any organization, the scope of the definition gets restricted to services in relation to consultancy as is evident from the name given to the service and commercial understanding of the expression "Management or Business Consultancy."

> **6.** In the case of services for complying with the laws of the country it has been specifically ruled in the case of *Ernest and Young* (supra) that the service cannot be covered by definition at Section 65(65), because such services are executory in nature and not in the nature of consultancy or advice.

8. We further find that CESTAT has been consistently holding that actual performance of the activities do not fall under Management Consultancy Service. Therefore, we find that the issue stands decided in favour of the appellants.

9. Coming to the issue of Export of Services, we find that Tribunal Ahmedabad Bench in the case of B A Research India Ltd. (Supra) held that:

> **8.** We have considered the submissions made by the learned DR.
>
> **9.** The issue before us is whether the service conducting clinical trials provided by the respondents are taxable service under the category of technical testing and analysis as defined under the Act. In the instant case the respondent has shown as the service provided to their foreign clients as export of service to know the provisions of the export of service which are reproduced here as under :
>
> **"Export of Services Rules, 2005**
>
> 3. Export of taxable service.-
>
> (i) Export of taxable service shall, in relation to taxable services,-
>
> ……….
>
> (ii) specified in sub-clauses (a),......(zzh), (zzi),..... and (zzzp) of clause (105) of Section 65 of the Act, be provision of such services as are performed outside India :
>
> Provided that where such taxable service is partly performed outside India, it shall be treated as performed outside India;

(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 delivered outside [provided from]* India and used outside India; and

(b) payment for such service [provided outside India]* is received by the service provider in convertible foreign exchange.

*[added or substituted w.e.f. 1-3-2007] #{deleted w.e.f. 1-6-2007}

8. Reading of the above provisions of Export of Services Rules, 2005 (hereinafter referred to as "the Rules") makes it amply clear that the taxable service specified in sub-clause (zzh) of Clause (105) of Section 65 of the Act is covered under Rule 3(1)(ii) of the Rules. The performance is not complete until the testing and analysis report is delivered to the client. In the present case, when such reports were delivered to the clients outside India, it amounts to taxable service partly performed outside India. The performance of the taxable service has no validity/sanctity unless its report is submitted to the service receiver/client. The clients do not have any value for merely performance if no report is delivered to them. Consideration of the service is received by the appellants only when they deliver the study report and the certificate of the testing and analysis of the clinical trials conducted by them. Thus, delivery of the report is an essential part of their service and the service is not complete till they deliver the report. The report is delivered outside India and the same is used outside India. These facts also fortify the views taken hereinabove that the service provided by the appellants was export of service and I am inclined to them such taxable service as export of service and therefore not taxable."

10. From the above provision it is clear that the said services came under Rule 3(1)(2) (sic) of the Rules. It is very much clear that the performance of the service is not complete until the testing and analysis report is delivered to its client. In the present case, when such reports were delivered to the clients outside India it amounts to taxable service partly performed outside India. The performance of testing and analysing has no value

> unless and until it is delivered to its client and the service is to be complete when such report is delivered to its client. Thus, delivery of report to its client is an essential part of the service report was delivered outside India and same was used outside India. This is not the disputed fact. We hold that the respondent satisfied the conditions of Rule 3(2) and accordingly the respondents are eligible for the exemption under Notification No. 11/2007-S.T. dated 1-3-2007. We do not find any force in the argument made by the learned DR. With this observation, the impugned order is upheld and the appeal filed by the Revenue is rejected. Stay petition is also disposed off accordingly.

10. We find, in view of the above, that the Export of Services claimed by the appellants is in order and the impugned order cannot be sustained on this count. Further, we find that this Bench in the case of Optum Global Solutions India Pvt. Ltd. (supra) held that:

> 8.1 As regards the second issue regarding export of CRM services, we find that in the show cause notice as well as in the impugned order, the allegation is with regard to CRM services whereas the demand has been confirmed against the appellant for entire turnover comprising of Data Management services as well as CRM services, which is bad in law because the turnover for Data Management services was 58% of the total taxable value and the turnover for CRM services was to the tune of 42% of the total taxable value and therefore confirming the entire demand under CRM services is not tenable.
>
> 8.2 Further, we find that with regard to Data Management services, the department has accepted it as an export and has been granting regularly the refunds to the appellant, which is clear from the various refund orders placed on record. These refund orders have not been challenged and have attained finality which clearly establishes that Data Management services fulfil all the conditions of export as required in law.
>
> 8.3 Further, we find that the nature of services provided by the appellant is in the nature of providing supervision and support onbehalf of

Ingenix with regard to administration of drugs developed by pharmaceutical companies to humans in hospitals. The appellant does not possess approvals from the regulatory authorities to conduct the clinical trials or carry out any testing or analysis on any drugs, goods or materials; the appellant only carries out supervision services on behalf of Ingenix with whom they had entered into an Agreement to supervise and report back to Ingenix about trials and tests being conducted by hospitals and therefore, these services are rightly classifiable as „business auxiliary services" ("BAS") being rendered on behalf of the client or it may at best be classified as 'business support service' ("BSS") being services as a support to Ingenix's business.

8.4 Further, we find that as per the Rule 3(1)(iii) of Export of Services Rules, 2005, the services rendered by the appellant to Ingenix who is located outside India, fall under the „export of services" because there is no dispute with regard to receipt of foreign exchange also. Though, in the impugned order, impugned services rendered by the appellant have been classified as „Technical Testing and Analysis services", which according to us, do not fall in the definition of „Technical Testing and Analysis service" because the appellant is not undertaking any technical testing and analysis for the purpose of testing of drugs and preparations. The ld. Commissioner in para 31.1 of the impugned order has observed that the service of administration of drugs or clinical research or testing of drugs provided by hospitals to pharmaceutical companies do not get completed unless results were collated by the assessee in the desiredformat. The collation of reports in a desired (digital) format is a Data Management service which the department has already accepted as „export of service". Even assuming that the services performed by the appellant are in the nature of testing and analysis service, even then, it will amount to „export of service" because the said service partly performed outside India, to the extent of delivery of reports outside India and thus, qualifies as „export of service" under Export of Service Rules, 2005 as held in the cases CST vs. B.A. Research India Ltd (supra), Apotex Research

Pvt Ltd (supra) and C3i Consultants India Pvt Ltd (supra).

11. Coming to the issue of levy of service tax on the Out-of-Pocket Expenses, we find that the dispute has been laid to rest by the decision in the case of Intercontinental Consultants and Technocrats Pvt. Ltd. (supra). We find that learned Commissioner did not have the benefit of the said judgment while passing the impugned order. We find that this Bench in the case of Smt. Ritu Arora (supra) has followed the above decision. In view of the same, we find that this issue also stands settled in favour of the appellants. As we find that the impugned order does not stand on merits, we are not going into the other arguments of the learned Counsel for the appellants.

12. In view of the above, both the appeals are allowed.

(Operative part of the order pronounced in the open court)

(S. S. GARG)
MEMBER (JUDICIAL)

(P. ANJANI KUMAR)
MEMBER (TECHNICAL)

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