

**IN THE CUSTOMS, EXCISE AND SERVICE TAX
APPELLATE TRIBUNAL
SOUTH ZONAL BENCH AT CHENNAI
[COURT : Division Bench B1]**

Appeal No.: ST/00429/2012

[Arising out of Order-in-Appeal No. 76/2012 (MST)
dated 10.04.2012 passed by the Commissioner of Central
Excise (Appeals), Chennai]

The Commissioner of G.S.T. & Central Excise, : **Appellant**
Chennai South Commissionerate

Versus

M/s. Fraser & Ross, : **Respondent**
2nd Floor, Temple Towers,
672 Anna Salai,
Nandanam, Chennai – 600 035

Appearance:-

Shri A. Cletus, ADC (AR)
for the Appellant
Shri. Harish Bindumadhavan, Advocate
for the Respondent

CORAM:

Hon'ble Shri Madhu Mohan Damodhar, Member (Technical)
Hon'ble Shri P. Dinesha, Member (Judicial)

Date of Hearing: 12.12.2018

Final Order No. **43099 / 2018**

Per Madhu Mohan Damodhar :

After hearing both sides, we find that the issue in dispute viz.,
taxability with regard to services of "Management Consultancy,
Manpower Recruitment Agency" was rendered by the appellant
prior to 01.08.2002.

2. We find that the very issue has been addressed by this Tribunal in respect of the very same respondent in their own appeal in Appeal No. ST/129/2006-DB wherein vide *Final Order No. 41081/2017 dated 21.06.2017* it has been held as under :

“4. The issue whether the services of Management Consultant and Manpower Recruitment Agency provided by appellants in their professional capacity during the disputed period is taxable or not is settled by the decision of the Chennai Bench of the Tribunal in the case of Deloitte Haskins & Sells Vs. Commissioner of Service Tax vide Final Order No. 40953/2017 dated 13.6.2017 as well as the judgment of the Ahmedabad Bench of the Tribunal as reported in 2014-VIL-292-CESTAT-AHM-ST and also in the case of M/s.S.B. Billimoria & Co. & Anr. Vs. Commissioner of Service Tax, Chennai rendered by this Tribunal in Final Order No. 40896 & 40897/2014 dated 27.11.2014. The relevant portion of the order is reproduced below:-

“3. After hearing both sides and on perusal of the records, we find that there is no dispute that the appellants are Practicing Chartered Accountants under Section 69 of Chapter V of the Finance Act, 1994. The appellants were also rendering taxable service under “Management Consultancy, Man-power Recruitment Agency” service. They were paying service tax on the said service with effect from 01.08.2002, as it was included under the category of “Practicing Chartered Accountants” service by inserting Explanation in Notification No.15/2002-ST, dated 01.08.2002 of parent Notification No.59/98-ST, dated 16.10.1998. In the present appeals, the demand was raised prior to 01.08.2002 under the category of Management Consultancy Service. The appellants claimed the benefit of the Notification 59/98-ST (supra), as no service tax is leviable on the “Practicing Chartered Accountant” for rendering “Management Consultancy Service” . On a perusal of the notification No.59/98-ST (supra), we find that the Central Government exempted taxable services provided by a Practicing Chartered Accountant in his professional capacity to a client, other than the taxable service as mentioned in clause (i) to (xi) of the said notification. It is seen that the Management Consultancy Service is not covered in the said notification. The words exempts the taxable services provided by a “Practicing Chartered Accountant” in the said notification make it clear that any taxable service provided by the Practicing Chartered Accountant other than mentioned in the notification are exempted. This is also clear from amended Notification No.15/2002-ST (supra). The relevant portion of the Notification No.15/2002 is as under:-

In the said notification, the following Explanation shall be inserted in the end, namely:-

“Explanation. - Nothing contained in this notification shall apply to the services provided by a practising chartered accountant, a practising company secretary or a practising cost accountant which may fall in any other taxable services as defined in clause (90) of section 65 of the said Act.

Illustration :- The service provided by a practising chartered accountant, a practising company secretary or a practising cost accountant in connection with the management of any organization in any manner or recruitment of manpower in any manner shall be deemed to be the taxable service provided under the category of management consultant or manpower recruitment agency, as the case may be. Therefore no exemption under this notification shall be applicable to such practising chartered accountant, a practising company secretary or a practising cost accountant”.

There is no dispute that Management Consultancy Service is not mentioned in clause (i) to (xi) of the said notification. So, the appellants are eligible to the benefit of the said notification prior to 01.08.2002.

4. *We find that in the case of M/s. Deloitte Haskins and Sells (supra) the issue to be decided is as to whether the appellants, the practicing Chartered Accountants are eligible for benefit of the said notifications from rendering service covered under the “Management Consultancy Services”. So, we are unable to accept the submission of the learned Authorised Representative. The appellant is eligible for exemption under notification as per Board’s Circular No.55/98-ST. For the proper appreciation of the case, the relevant portion in the case of M/s. Deloitte Haskins and Sells (supra) is reproduced below:-*

“ 10. As regard the question of service tax liability on the Management Consultancy Services, the issue can be grouped into two parts. The first part upto Issuance of Notification No.15/2002-ST, dated 1st Aug. 2002 and subsequent period.

10.1 The appellant is a practicing Chartered Accountant and has been registered with the authorities as such. We find that during the period prior to 01.08.2002, he Chartered Accountant services were liable to be taxed and Notification No.59/98-ST; dated 16.08.1998 specifically exempted the taxable services provided by the practicing Chartered Accountant or a Company Secretary or a Cost Accountant; services which are rendered to a client other than taxable services which were enumerated in the said Notification. In our considered view, the interpretation put forth by the appellant of the said notification are acceptable, as the services which are in question in this case are not covered under the said Notification 59/98-ST till 01.08.2002. This view has been taken by the Co-ordinate Bench in the case of Sridhar & Santhanam (supra) wherein the Tribunal held as under:-

“ I have considered the case records and the rival submissions. The dispute to be resolved in this case relates to the Notification No.15/2002-Service Tax, dated 1st August, 2002. The dispute is confined to the date of effect of the Explanation introduced by this notification. The notification does not contain anything to indicate that it operates from a past date. The language of the notification does not say that the notification is intended to remove doubts and clarified a position valid since the issuance of Notification No.59/98-S.T. Considering the language of the notification, in the absene of a specific stipulation as regards its date of effect, the amendment has to be held to be effective only from the date of issue of this notification. The text of the Notification No.59/98-S.T. does not support denying such exemption as availed by the appellant. Perhaps, the legislature did not envisage such a benefit under the said notification and hence the disputed notification was issued. But a legislative intent which is not obvious cannot be read into a notification by the agency which implements this notification. There is a risk in allowing the enforcing agency to read the legislative intent in that the same can be differently interpreted by different persons. A benefit available on a plain reading of the notification cannot be denied retrospectively by issuing a notification. The Explanation introduced under Notification No.1/2002-S.T., dated 01.08.2002, therefore, takes effect only from the date of its issue. Therefore, “Man-power recruitment Agent” it rendered during the period 16.10.1998 to 31.07.2002 confirmed in the impugned order cannot be sustained. Demand is barred by limitation in the absence of charge of suppression of facts. The returns for the material period had been filed in time as prescribed and the demand notice was issued beyond the normal period after riling the returns. In the result, this appeal is allowed.”

11. *In view of the foregoing judicial pronouncement, we find that till 01.08.2002 any service provided by the appellant other than the services as mentioned in Notification No.55/98-ST are not liable to be taxed.”*

3. In view thereof, we find that the present appeal of the Revenue is infructuous. For this reason, the appeal is **dismissed as infructuous.**

(Dictated and pronounced in open court)

(P Dinesha)
Member (Judicial)

(Madhu Mohan Damodhar)
Member (Technical)

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