

**CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHENNAI**

REGIONAL BENCH – COURT No. I

Service Tax Appeal No. 42187 of 2015

(Arising out of Order-in-Appeal No. 153/2015 (STA-II) dated 23.07.2015 passed by Commissioner of Service Tax (Appeals-II), No. 26/1, Mahatma Gandhi Marg, Nungambakkam, Chennai – 600 034)

M/s. Sysvine Technologies Private limited

...Appellant

No. 5, First Trust Link Street,
II Floor, Mandaveli,
Chennai – 600 028.

Versus

Commissioner of GST and Central Excise

...Respondent

Chennai II Commissionerate,
No. 26/1, Mahatma Gandhi Marg,
Nungambakkam,
Chennai – 600 034.

APPEARANCE:

For the Appellant : Mr. Samuel, Finance Director
Mr. Gudan, Managing Director

For the Respondent : Mr. N. Satyanarayana, Authorised Representative

CORAM:

HON'BLE MR. VASA SESHAGIRI RAO, MEMBER (TECHNICAL)

HON'BLE MR. AJAYAN T.V., MEMBER (JUDICIAL)

FINAL ORDER No. 40721 / 2025

DATE OF HEARING : 07.02.2025

DATE OF DECISION : 10.07.2025

Per Mr. VASA SESHAGIRI RAO

Service Tax Appeal No. ST/42187/2015 has been
filed by M/s. Sysvine Technologies Private Limited
(hereinafter referred to as 'Appellant') assailing the
impugned Order-in-Appeal No. 153/2015 (STA-II) dated
23.07.2015 passed by the Commissioner of Service Tax

(Appeals-II), Chennai confirming the order passed by the Original Authority *vide* Order-in-Original No. STC/19/2012-ADC-LTU dated 16.04.2012.

2.1 Brief facts of the appeal are that the Appellant is providing information technology solutions, services for computationally challenging industries such as Radiology solutions in Healthcare, Neural Networks based algorithms in Knowledge Management and SNMP programming. They obtained Service Tax Registration on 04.06.2008 under the service category of "Information Technology Software Services" and have paid Service Tax on Information Technology Services with effect from 16.05.2008. The period of dispute in the present appeal is 01.04.2005 to 31.04.2008.

2.2 A Show Cause Notice No. 463/2010 dated 01.09.2010 was issued to the Appellant wherein it was proposed to demand (a) an amount of Rs.3,89,081/- as Service Tax under Management Consultant Service for the period 2005-2006 to 2007-2008; and (b) an amount of Rs. 71,849/- as Service Tax under "Commercial Training or Coaching Service for the period 2005-2006 to 2007-2008.

3. The Original Authority confirmed the demand by holding that (a) it cannot be argued that just because Information Technology Service was specifically brought into service tax net under a separate category with effect from 16.05.2008, the same is not taxable prior to that date; (b) since the demand was quantified by levying service tax on Management Consultancy Services after allowing the threshold exemption limit of Rs. 4 lakhs during 2005-06, the appellant was not eligible for the exemption limit for demand on commercial coaching or training services during the years 2005-06, 2006-07 and 2007-08, as sought by them.

4. On appeal by the Appellant, the impugned Order-in-Appeal No. 153/2015 (STA-II) dated 23.07.2015 was passed confirming the above demands on the following grounds:

- i. Notification No. 16/2004-ST reveals that information technology service fell under various category of services including Consulting Engineer Service.
- ii. Board's letter F.No.334/1/2008-TRU dated 29.2.2008 read with the definition of Management Consultancy Service in Section 65(65) of the Act reveals that the services relating to information technology software were included in Management Consultancy even prior to 16.5.2008. Therefore, the appellant's plea that the

services provided by them were taxable only with effect from 16.5.2008 is not tenable.

5. The Appellant submitted that the service provided by them during the period 2005-2008 is "Information Technology Service" and not Management Consultancy Service. The appellant relied on the following explanation in the definition of Business Auxiliary Service: -

'For the removal of doubts, it is hereby declared that for the purposes of this clause, - "information technology service" means any service in relation to designing, developing or maintaining of computer software, or computerized data processing or system networking, or any other service primarily in relation to operation of computer systems.'

The Appellant has further explained the nature of services rendered by them to each of their clients as under: -

- a. Net-O2 Technologies hired the appellant as a Software Vendor to develop software product known as Attest Framework NG during the period 2007-2009, in Java, which is a computer programming language. In the invoice and PO, there were words like Prototyping and GUI which were very software related; prototyping is the initial DESIGN process of software. GUI stands for Graphical User Interface of software.

- b. the appellant provided Java and C++ programs, design and development services, Software Requirement Specification (SRS) Documents and Database ER Diagrams to MedUSA Systems Private Limited who approached them in December 2007 to provide design and development of Radiology related software.
- c. the Appellant designed and developed a system for Jeyanth Logistics Private Limited using Java and MySQL technologies.
- d. software projects were developed by the appellant using Java, .NET technologies and delivered to Unlimited Innovations Private Limited with source code and documentation. Further, the appellant designed and developed software for automating the software life cycle processes of this client.

5.1 The Appellant contended that their core service is Information Technology, viz., "...designing, developing or maintaining of computer software or ...system networking...any other service primarily in relation to operation of computer systems" and it is exempted till May 16th 2008. They quoted the Tribunal's observation in *IBM India Pvt Ltd Vs CST [2010 (23) STT 338 Bangalore]* wherein "...The Tribunal observed that where a particular service was

excluded from the scope of taxable service, it would not be levied to tax under any other category..”.

5.2 It was averred that as per the definition of “taxable services” with effect from 10th September 2004, service provided to any person by a consulting engineer in relation to computer software is not a taxable service. Therefore, even if it is assumed that the services rendered by them were Consulting Services, there is no Service Tax on the same.

5.3 It was argued that “Management Consulting” does not include actual act of work with clear deliverables like design and development of software programs as opposed to “Technical Advice”. The Appellant relied on the case of Basti Sugar Mills Company Limited [2007 (7) STR 431] to submit that definition of management consultancy services covers advisory service from a consultant and not the actual performance of the management function.

5.4 The appellant submitted that they were designing and developing, but not implementing, ERP software and that their work comes under “Information Technology”. They relied on *IBM India Pvt. Ltd. vs. CST [2010 (17) STR 317 (Tri.-Bang)]* and *IBM India Pvt Ltd vs*

CST [23 STT 338 Bangalore] to submit that ERP implementation could not be taxed under Management Consultancy Services due to specific exclusion of these services from 'consulting engineering service'.

6. Shri Samuel, Finance Director and Shri Gudan, Managing Director of the appellant company appeared and argued for the appellant and reiterated the above submissions of the Appellant.

7. The Ld. Authorized Representative Shri N. Satyanarayana appeared and argued for the department and submitted that during the relevant period, the following definitions were given to "management or business consultant":

(a) Prior to 1.5.2006:

"management consultant" means any person who is engaged in providing any service, either directly or indirectly, in connection with the management of any organisation in any manner and includes any person who renders any advice, consultancy or technical assistance, relating to conceptualising, devising, development, modification or upgradation of any working system of any organization;

(b) W.e.f. 1.5.2006:

“management consultant” means any person who is engaged in providing any service, either directly or indirectly, in connection with the management of any organisation 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;

(c) W.e.f. 1.6.2007:

“management 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.

7.1 The Ld. A.R further submitted that as per Section 65(105)(r) of the Finance Act, 1994, taxable service in relation to management consultancy service is service rendered to any person by a management or business consultant in connection with the management of any organization or business, in any manner.

7.2 The Ld. A.R pointed out that services relating to ERP, which is basically a software driven package, was a taxable service under management consultancy, but was exempted by notification No. 16/2024 which reads as under: -

"In exercise of the powers conferred by sub-section (1) of section 93 of the Finance Act, 1994 (32 of 1994), the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts the taxable service provided to a client in respect of Enterprise Resource Planning software system by a management consultant in connection with the management of any organization in any manner, from the whole of service tax leviable thereon under section 66 of the said Act."

7.3 The Ld. Authorized Representative argued that (a) at the time of introduction of Information Technology Service, the clarification issued by the Department vide letter F.No.334/1/2008-TRU dt. 29.2.2008 stated in clear terms that IT services were already leviable to

Service Tax under various services, including management or business consultant's service under Sec. 65(55); (b) the appellant has provided technical assistance in the form of providing software programs using Java etc., for various business activities and management of organization of their clients; and (c) the above circular clarifies the position with regard to the consultancy provided by the appellant in the present case on computer related projects, which include design, programming, execution and testing of various software programs for the management or business of an organization, including logistics, clearing and forwarding, etc., which is specifically included in the definition of the term "management consultant".

8. Heard both sides and considered the rival arguments and submissions and also the evidences available on appeal records.

9. The main issue for determination in this appeal is whether the services rendered by the appellant to their clients during the period from 2005-06 to 2007-08 merit classification under "Information Technology Software Services", as contended by the appellant, or under "Management Consultancy Services", as held in the impugned order?

10. The impugned order relies on (a) the definition of "Management Consultant" in the Finance Act, 1994 during the relevant period; and (b) the clarification in Board's letter D.O. F. No.334/1/2008-TRU dated 29.02.2008. However, it fails to establish the causal link between the said definition and the service rendered by the appellant. The appellant is rendering the service of design and development of software and is not rendering any advice, consultancy or technical assistance relating to procurement and management of information technology resources in connection with the management of any organization or business in any manner.

11. The distinction in designing and development of software programmes *vis-à-vis* management of business and organization has to be understood. Utilization of IT in management or business organization cannot be confused with or equated with the provision of IT services.

12. Emphasis is on advice, consultancy or technical assistance including in the fields of hardware engineering or software engineering for classifying as Consulting Engineering Service. The activity of the Appellant is that they have provided information technology solutions, services for computationally challenging industries such as Radiology

solutions in Healthcare, Neural Networks based algorithms in knowledge Management and SNMP programming in telecommunication industries. The impugned order recorded that *'the assessee were providing software related services such as networking services, system and network management, business process improvement initiatives, software development lifecycle improvement initiatives, subscribers services, article tracking module service, systems service, ISO certification initiatives, domain name rental, web space rental, technical operational, leadership services and system integration services' and that'... the consultancy provided by the assessee in the present case on computer software related projects which include design, programming, execution and testing of various programmes for the management or business of an organisation.*

The Lower Appellate Authority had rejected the appeal on the ground that Management Consultancy Service from 2005-06 to 2007-08 covers the above activity of the Appellant though these were related to Information Technology Services.

IT services were specifically brought into Service Tax net w.e.f. 16.05.2008.

13. As per Section 65(53a) of the Act, the term "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 a computer or an automatic data processing machine or any other device or equipment.

Section 65(105) (zzzze) of the Act defines the taxable service under: -

"Information Technology Software" as any service provided or to be provided to any person, by any other person in relation to information technology software for use in the course of furtherance of business or commerce, including,

- 1. Development of information technology software.*
- 2. Study, analysis, design and programming of information technology software.*
- 3. Adaptation, upgradation, enhancement, implementation and other similar service related to information technology software.*
- 4. 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 startup phase of a new system, specifications to secure a database, advice on proprietary information technology software*

14. Further, in terms of Board's Letter D.O.F. No.334/1/2008-TRU dated 29.02.2008, IT services and IT

enabled services (ITeS) which are already leviable to service tax under various taxable services are: -

- Consulting engineer's service - advice, consultancy or technical assistance in the discipline of hardware engineering [section 65(105)(g)].
- Management or business consultant's service - procurement and management of information technology resources [section 65(65)].
- Management, maintenance or repair service - maintenance of software, both packaged and customized and hardware [section 65(64)].
- Banking and other financial services - 'provision and transfer of information and data processing' [section 65(12)].
- Business support service - various outsourced IT and IT enabled services [section 65(105)(zzzq)].
- Business auxiliary service - services provided on behalf of the client such as call centres [section 65(19)].

It is seen from the above list of services that rendering advice, consultancy or technical assistance in relation to hardware engineering is taxable whereas rendering advice, consultancy or technical assistance in relation to software is non-taxable. In the order-in-original it was stated that "the assessee had provided technical assistance in the form of designing software programs using Java etc., for various

business activities and for management of organization of their clients. The above circular clarifies the position with regard to the consultancy provided in the present case on computer software related projects, which include design, programming, execution and testing of various software programs for the management and business of an organization". Thus, it is accepted by the Department that the appellant is rendering technical assistance in relation to software. Accordingly, the services rendered by the appellant are "Information Technology Software Services" and so clearly non-taxable during the disputed period. On perusal of the activity and services rendered by the Appellant and on careful examination of the definition of Information Technology brought into tax w.e.f. from 16.05.2008 along with the definition of Management Consultancy Service, we are clear that the services rendered by the Appellant are more appropriately classifiable under IT services and so no levy of the tax existed then.

15. We are of the view that the Departmental Authorities have tried to fit in the activity of the Appellant into the definition of Consulting Engineer Service which is not justified. We also approve the Appellant's contention that their core service is related to IT services and not advice, consultancy or any technical assistance to discharge the

management function effectively which may be the end result or objective. We take note of the decision of the Tribunal Bangalore's observation in the case of *M/s. IBM India Pvt Ltd Vs CST [2010 (23) STT 338 Bangalore]* wherein it was held that where a particular service was excluded from the scope of taxable service, it would not be levied to tax under any other category.

16. In view of the above discussion, demand of service tax of Rs.3,89,081/- under Management Consultancy Services during the period from 2005-06 to 2007-08 cannot be sustained and so ordered to be set aside. Further demand of service tax of Rs.71,849/- for the above period under Commercial Coaching and Training Services is also set aside as the consideration received on this taxable service would be below the threshold.

17. In the result, the impugned Order-in-Appeal No. 153/2015 (STA-II) dated 23.07.2015 is modified to the extent of setting aside the demand of service tax on Management Consultancy Service and Commercial Coaching & Training Services.

18. The appeal is allowed with consequential relief, if
any, as per the law.

(Order pronounced in open court on 10.07.2025)

Sd/-
(AJAYAN T.V.)
MEMBER (JUDICIAL)

MK

Sd/-
(VASA SESHAGIRI RAO)
MEMBER (TECHNICAL)