

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI.**

PRINCIPAL BENCH,
COURT NO. IV

SERVICE TAX APPEAL NO. 51417 OF 2016

[Arising out of the Order-in-Appeal No. 118/ST/DLH/2015 dated 04/02/2016
passed by The Commissioner Service Tax (Appeals-I), New Delhi.]

**M/s Infinity Credit Consultants,
A unit of M/s JNG Properties &
Leasing Pvt. Ltd.**

Appellant

16-C, Atma Ram House, 1 Tolstoy Marg,
Connaught Place,
New Delhi -110 001.

VERSUS

Commissioner of Service Tax (Appeals-I),

Respondent

C.R. Building, I.P. Estate,
New Delhi.

APPEARANCE

Shri Kamal Aggarwal, Advocate – for the appellant.
Dr. Radhe Tallo, Authorized Representative for the Department.

CORAM:

**HON'BLE DR. MS. RACHNA GUPTA, MEMBER (JUDICIAL)
HON'BLE MS. HEMAMBIKA R. PRIYA, MEMBER (TECHNICAL)**

FINAL ORDER NO. 50799/2023

DATE OF HEARING : 23.03.2023.
DATE OF DECISION : 30.06.2023.

RACHNA GUPTA

Appellants are engaged in providing taxable services under the category of 'Business Auxiliary Services' to M/s ICICI Bank. While scrutinizing the documents of the appellant, Department observed that they have received total amount of Rs. 1,02,12,656/- for the year 2006-2007 to 2010-2011 as

commission received from M/s ICICI Bank holding that the commission was against providing the 'Business Auxiliary Services', to the bank, the service tax of Rs. 16,19,972/- was observed to not have been paid by the appellants. Appellants were also not found registered with the Service Tax Department. However, certificate was produced by the appellants issued in the name of M/s JNG Properties & Leasing Pvt. Ltd. for providing taxable services as that of Business Auxiliary Services. It was mentioned by the appellant that they are the unit of said M/s JNG Properties, hence, they have not taken registration separately. The ITR returns for the impugned period were also submitted to prove the same.

2. During the further scrutiny, department observed that appellants have received some income as legal and professional charges amounting to Rs. 36,55,792/-, Rs. 18,93,710/-, Rs. 24,04,105/- and Rs. 24,45,358/- respectively for the aforesaid period, however, the tax liability thereupon has not been discharged. The department while forming the opinion that the said activity of providing legal and professional consultancy is nothing but a 'Business Support Services' for the banks/financial institutes, the service tax liability was questioned. In addition, appellant was also observed to have received maintenance charges of Rs. 1,97,584/- and Rs. 1,98,000/- respectively for the financial year 2009-2010 and 2010-2011. Observing those services as a consideration towards providing taxable service under category of 'Management, Maintenance or Repair Service',

that the appellant was observed liable to discharge the service tax liability.

3. With these observations, a show cause notice No. 1949 dated 23.04.2012 was served upon the appellants proposing the recovery of Rs. 16,19,972/- as service tax (Rs. 15,71,705/- towards providing 'Business Support Service', Rs. 40,745/- service tax towards 'Management, Maintenance or Repair Service' and Rs. 7,522/- as short paid on commission income. In addition, appropriate penalties under Section 76, 77 and 78 of the Finance Act, 1994 were proposed and proportionate interest was proposed to be recovered. The said proposal was confirmed while the order-in-original No. 2428 dated 28.10.2014. In the appeal, learned Commissioner (Appeals) has modified the order by doing away the demand of service tax against the commission received by the appellant. Still being aggrieved, the appellant is before this Tribunal.

4. We have heard Shri Kamal Aggarwal, learned counsel for the appellant and Dr. Radhe Tallo, learned Departmental Representative for the Revenue.

5. Learned counsel for the appellant has submitted that the appellant has been vigilant about his tax liabilities, hence, was regularly and diligently discharging his tax liability on commission as used to be received from the banks while referring customers desirous of seeking loan, to the banks. It is further submitted that the appellant was also a consultant to the banks/financial

institutions and thus was rendering the services of drafting and preparing legal reports about the viabilities of the loans and property titles on which loan is sought. Hence, it was purely the 'Legal Consultancy Service' as contrary to 'Business Support Service' as alleged by the Department. The demand is therefore liable to be set aside. The decision as relied upon by the Adjudicating Authority is mentioned to have wrongly been relied upon. It is further submitted that the demand under 'Management, Maintenance or Repair Services' has also been wrongly confirmed. Learned counsel for the appellant, finally impressed upon, that the entire demand is liable to be set aside for the sole reason that show cause notice has been issued invoking the extended period of limitation, despite that no single circumstance exist for the said invocation. The order confirming demand is, therefore, prayed to be set aside and appeal is prayed to be allowed.

6. While rebutting the submissions made on behalf of the appellant, learned Departmental Representative has reiterated the findings of order of Commissioner (Appeals). It is mentioned that the demand under 'Business Auxiliary Services' has already been dropped by Commissioner (Appeals), with respect to the imposition of penalties, though Commissioner (Appeals) has accepted the findings of lower authority, however, has considered that if the appellants have made the payment of entire service tax liability, they are to be given the benefit of paying penalty @ 25%. Concerned authority has accordingly been directed to verify

the same and if found correct, to give the benefit of paying penalty @ 25%. It is submitted that while providing the services to the bank about verification of the particulars of the loanee, the appellants have been providing a 'Business Support Service' impressing upon no infirmity in the order under challenge. Appeal is prayed to be dismissed.

7. Having heard the rival submissions, we observed that in the impugned show cause notice, following were the allegations against the appellant :-

- (a) The appellant is working as a Direct Sales Agent/ Associate (DSA) of M/s ICICI Bank and received commission and have not deposited service tax under the category of "**Business Auxiliary Service (BAS)**".
- (b) The appellant is liable to pay service tax for income from legal and professional charges under the category of "**Business Support Service (BSS)**".
- (c) The appellant also received maintenance charges for the services covered under "**Management, Maintenance and Repair Services**".

The demand on three of the counts was confirmed by the original Adjudicating Authority. However, Commissioner (Appeals) has set aside the demand under the category of 'Business Auxiliary Service' and has also allowed the benefit of

the payment of 25% of penalty amount, subject to verification. Department admittedly is not in appeal against the said order.

8. Now it is to be adjudicated as to whether the income of the appellant under the head Legal and Professional Charges falls under the category of 'Business Support Service' as alleged in the show cause notice or it falls under 'Legal Consultancy Service' as asserted by the appellant. For the purpose definition of both the services is foremost necessary to be looked into. 'Business Support Service' is defined under Section 65 (104) (c) of Finance Act, 1994. It reads as follows :-

"Support Service of Business & Commerce" means services provided in relation to business or commerce includes evaluation of prospective customers, telemarketing, processing of purchase orders and fulfillment services, information and tracking of delivery schedules, managing distribution and logistics, customer relationship management services, accounting and processing of transactions, operational assistance for marketing, formulation for customer service and pricing policies, infrastructural support services and other transaction processing".

Thus the definition itself is indicative of list of services to be covered under BAS.

The taxability of this service is mentioned under Section 65 (105) (zzzq) of Finance Act, 1944 to read as follows :

"Taxable Service means any service provided or to be provided to any person, by any other person, in relation to support services of business or commerce, in any manner".

Thus the basic essence of the Business Support Service is that it must be support service in business and commerce.

Legal Consultancy is defined under Section 65 (105) (zzzzm) of Finance Act, to read as follows :-

“Taxable service of legal consultancy” means any service to a business entity, by any other business entity in relation to advice, consultancy or assistance in any branch of law in any manner.”

9. The bare perusal of the definitions reveal that whenever a business entity gives any opinion or offers expert or professional advice or any other business entity in any branch of law it will be called as 'Legal Consultancy Service'. However, when advice consultancy or assistance is provided purely to the banks/ financial institutions with respect to sanctioning of loans to their clients by way of verification of documents provided by the customers of these banks/financial institutes for the purpose of availing the credit facility, the service rendered, is for the appraisal of business reports with respect to the verification of the clients, of the banks/Financial Institutions, through concerned authorities. We observe that though appellants were drafting and preparing legal reports but only for banks/financial institutions that too for ensuring the viability of loan and for verifying the property title documents for which such verification was sought by such banks. We opine that such activity is nothing beyond a due diligence of financial records of the customers of these banks/ financial institutions. Thus it cannot a service provided as assistance in any branch of law. It actually becomes the service provided to a business entity/a financial institute/bank, to support the business or commerce of the said bank. These

observations are sufficient for us to hold that the services, in question, have rightly been held to be the 'Business Support Service' which is a taxable service. Any consideration received by the appellant for rendering such service is therefore liable to tax. Hence, we do not find any infirmity in the order under challenge when the demand of Rs. 16,19,972/- has been confirmed for the period from 2006-2007 to 2009-2010.

10. Coming to the demand under 'Management, Maintenance or Repair Service', we observe that the appellants, admittedly, generate income by way of maintenance charges towards the maintenance of documents and towards the security of documents by keeping the same at the premises of the appellants. The definition of 'Management, Maintenance or Repair Service' as defined under Section 65 (64) of Finance Act, 1994 and taxability thereof defined under Section 65 (105) (zzq) of the Act as amended w.e.f. 16.06.2005, are as follows :

"management, maintenance or repair" means any service provided by –

- (i) Any other under a contract or an agreement; or
- (ii) A manufacturer or any person authorized by him, in relation to, -
 - (a) Management of properties, whether immovable or not;
 - (b) Maintenance or repair of properties, whether immovable or not; or

(c) Maintenance or repair including reconditioning on restoration, or servicing of any goods, excluding a motor vehicle”;

Section 65 (105) (zzq) of Finance Act, 1994 :

“to any person, by [any other person], in relation to [commercial or industrial] construction”

11. The service tax instruction issued vide F. No. B-1/6/2005-TRU dated 27.07.2005 as relied upon by the Commissioner (Appeals) reads as follows :-

“16.2 Prior to 16.06.2005, such services covered maintenance or repair or servicing of any goods or equipment, excluding motor vehicles. However, **since 16.06.2005, services relating to maintenance or management of immovable property (such as roads, airports, railways, buildings, parks, electrical installations and the like) have also been covered under the purview of service tax. Such services would be taxable when provided under a contract or an agreement by any person or by a manufacturer or any person authorized by a manufacturer.**

16.3 Maintenance is to keep a machine, building etc. in a good condition by periodically checking and servicing or repairing. While repair is a one time activity, **maintenance is a continuous process of which repairing may be incidental or ancillary.**

16.4 Prior to 16.06.2005, maintenance or repair carried out under a maintenance contract or agreement was covered under service tax. Repair or servicing carried out under a contract other than a maintenance contract or agreement was not covered within the purview of service tax. **Maintenance or repair, including reconditioning or restoration or servicing of any goods or equipment, except motor vehicle (which is taxable under the category of authorized service station), undertaken as part of any contract or agreement (not necessarily maintenance contract or agreement) is now liable to service tax under this category of taxable service.** To attract service tax under this

category, the contract or agreement need not necessarily be a maintenance contract/agreement”.

12. The perusal makes it abundantly clear that the scope of the impugned service is to include reconditioning or restoration of any goods or equipments, except motor vehicles. Goods as per the dictionary meaning are the items which are meant for sale or for possession. Under Sale of Goods Act, 1930, any movable property except the actionable claims and money, stock and shares etc. are goods. The literal meaning of the word is that it connotes to anything which satisfies human desires provide utility and which can be produced or exchanged or consumed. We also observe that in the definition appearing in Section 65 (64) of Finance Act as quoted above, the explanation thereof clarifies that goods include the computer software and the properties includes information technology software.

13. In the light of this discussion, we have no hesitation to hold that the documents as have been maintained by appellants qualify be called as goods. Admittedly the appellant while maintaining and restoring those documents was charging its clients viz. banks/Financial Institutes for the same, for keeping those documents in its safe custody/security also appellant was receiving consideration. To our opinion, while doing this activity for their clients, the appellants were actually rendering the service of 'Maintenance, Management or Repair Service'. Hence, we do not find any infirmity in the findings arrived at by the

Adjudicating Authority while confirming the demand on this count.

14. Coming to the plea of wrong invocation of extended period of limitation, we observe that appellants are not registered under service tax regime. Though they have mentioned them to be a unit of M/s JNG Properties & Leasing Pvt. Ltd. which has duly been registered, but we observe that even M/s JNG Properties & Leasing Pvt. Ltd. (supra) is registered for providing 'Business Auxiliary Services' only. From the above discussion, it has already been held that the appellants were rendering 'Business Support Services' and 'Management, Maintenance or Repair Service'. Apparently neither appellants nor their main unit M/s JNG Properties & Leasing Pvt. Ltd. are registered for providing later service, to that effect it sufficiently amounts to suppression of facts. It was definitely the obligation of the appellant to bring-forth the fact of non-registration for any other services except for Business Auxiliary Service to the notice of department. The silence definitely amount to suppression of fact, we do not find any infirmity when extended period of limitation has been invoked by the Department while issuing the show cause notice.

15. For the same reasons, we do not find any infirmity in the detailed analysis given by the original Adjudicating Authority while imposing penalties under Section 76, 77 and 78 of the Finance Act which have duly been upheld by Commissioner (Appeals) in the order under challenge. However, the

Commissioner (Appeals) has invoked proviso (ii) to Section 76 of the Act subject to verification on the basis of the fact that the entire demand was paid by the appellant at the initial stage only. We do not find any infirmity in the said realization also.

16. In the light of above entire discussion, we hereby uphold the order under challenge consequent upon thereto. The appeal stand dismissed.

(Order pronounced in open court on 30/06/2023.)

(DR. RACHNA GUPTA)
MEMBER (JUDICIAL)

(HEMAMBIKA R. PRIYA)
MEMBER (TECHNICAL)

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