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CUSTOMS. EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066
CUSTOMS APPEAL BRANCH

Appeal No. ST/249 /2006

Date 04/08/2008

Assistant Registrar
C.E.S.T.A.T, New Delhi

To :
M/S NATIONAL PRODUCTIVITY COUNCIL
SCO 40, (1ST FLOOR), SECTOR-7C, MADHYA MARG,
CHANDIGARH
160019

M/S NATIONAL PRODUCTIVITY COUNCIL — Appellant

Vs

THE COMMISSIONER OF CENTRAL EXCISE,
CHANDHIGARH — Respondent

I am directed to transmit herewith a certified copy of **Final order No.** ST/186 2008 Customs dated 01/08/08 passed by the Tribunal under Section 129, (B) of the Customs Act,1962 & Financial Act 1994 relating to Service Tax

Assistant Registrar
(Customs Appeal Branch)

Copy to :

1. Respondent
   THE COMMISSIONER OF CENTRAL EXCISE, CHANDHIGARH
   C.R.BUILDING, PLOT NO 19, SECTOR 17C, CHANDIGARH
   160017
2. Adv. / Consult
   MR.K.K ANAND
   A-5,BASEMENT,LAJPAT NAGAR-III NEW DELHI-24
3. S.D.R.
4. J.C.D.R.
5. Bar association, CESTAT, New Delhi
6. M/s. Deeparchi Publications, M-93, Marg. 46, Saket, New Delhi 110017
7. M/s Centax Publictions (P) Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi -
8. Excise & Customs cases, B-37, Sector -1, NOIDA - 201301 Gautam Budh Nagar, (U.P.)
9. Raghuraman's 44-B, Regal Flat,Shipra Suncity, Indirapuram - 201010,Ghaziabad, DT, U.P.
10. Nidheshak publications, I.P.Estate, new Delhi
11. Taxmann Allied Service Pvt Ltd., 21/35, West Punjabi Bagh, New Delhi - 110026
12. Commercial Laws of India Pvt Ltd Post Bag No. 1033, No.70(Old No. 88), Thyagaraya Road, T. Nagar,Chennai 60017
13. Taxindiaonline.com Pvt.Ltd, B-XI/8183,Vasant Kunj, New Delhi - 110070
14. Office Copy
15. Guard file
16. Easy Service Tax Online Dot Com (P) Ltd
    407 A 9SCom mall, above Star India Bazar,
    Satellite Road, Ahmedabad - 15

Assistant Registrar
(Customs Appeal Branch)

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No. 2, R.K. Puram, New Delhi – 110 066.
Principal Bench, New Delhi

COURT NO. II
Service Tax Appeal No. 249 of 2006 and ST/MISC/405 of 2008

[Arising out of the Order-in-Revision No. 12/ST/CHD/2006 dated 31/03/2006 passed by The Commissioner of Central Excise, Commissionerate - Chandigarh.]

For Approval and signature :
Hon'ble Shri S.S. Kang, Vice President
Hon'ble Shri Rakesh Kumar, Member (Technical)

1.	Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	:
2.	Whether it would be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	:
3.	Whether their Lordships wish to see the fair copy of the order?	:
4.	Whether order is to be circulated to the Department Authorities?	:

M/s National Productivity Council — Appellant

Versus

CCE, Chandigarh — Respondent

Appearance

Shri K.K. Anand, Advocate – for the appellant.

Shri A.K. Madan, Authorized Representative (DR) – for the Respondent.

CORAM:**Hon'ble Shri S.S. Kang, Vice President**
Hon'ble Sh. Rakesh Kumar, Member (Technical)

DATE OF HEARING : 18/07/2008.
DATE OF DECISION: 01-08-08.

Final Order No. ST/186/08 Dated : 1/8/08

Per. Rakesh Kumar :-

The Appellant are an Institution recognized by the Department of Scientific and Industrial Research, Ministry of Science and Technology and according to them they are engaged only in Scientific and Technical consultancy for which they took regionwise service tax registration. In Punjab they took the Service tax registration for Scientific and technical consultancy on 12/09/01. A show cause notice dated 18/03/04 was issued to the Appellant alleging that during period from October 1998 to July 2001, they provided Management Consultancy service to their clients for which they received a total amount of Rs. 82,89,442/- and demanding service tax amounting to Rs. 4,14,472/- under 'Management Consultancy' on this amount, alongwith interest and also proposing imposition of penalty on them.

The jurisdictional Deputy Commissioner, vide order-in-original dated 11/10/01 dropped the proceedings against the Appellant holding that all the services provided by the Appellant are, in general, technical in nature and these services cannot be classified as Management Consultancy service. The order dated 11/10/01 was, however, reviewed by the Commissioner vide the impugned order-in-review dated 31/03/06 by which the duty demand amounting to Rs. 4,14,472/- alongwith interest was confirmed against the Appellant, penalty of Rs. 4,14,472/- was imposed under Section 78 and besides this penalties were also imposed under Section 76 and 75A.

2. Heard both the sides.

2.1 Shri K.K. Anand, Advocate, the learned counsel for the Appellant made the following submissions :-

(i) The Appellant are an Institution recognized by the Department of Scientific and Industrial Research, Ministry of Science and Technology. They employ mainly scientific and technical persons. The NPC, Chandigarh is providing, technical and scientific consultancy and training services in the States of

Punjab, Haryana, Himachal Pradesh, J&K and Union Territory of Chandigarh through a team of 11 technocrats. The nature of the Appellant's activities is clear from their "Memorandum of Association", from which it is clear that their activities come within the ambit of 'Scientific & Technical Consultancy only.

(ii) NPC Headquarters at Lodi Road, New Delhi had earlier been recognized as "Consulting Engineers" by the office of Deputy Commissioner, Service tax but after thorough scrutiny of the nature of their services, NPC was registered under Scientific and Technical Consultancy, not in "Management Consultancy" category. All regional offices of NPC in different states are registered under "Scientific & Technical Consultancy" and are paying service tax on that basis.

(iii) The services being provided by the Appellant relate to improvement of process technology, economical use of power and fuel utilizing scientific principles of energy conservation and application of technical knowledge in improving and standardizing process and product quality (ISO – 9000 certification). All services provided by the Appellant during August 1998 to July 2001 period, which are the subject matter of dispute, are, in general, technical in nature.

2.2 Shri A.K. Madan, the learned Departmental Representative made the following submissions :-

(i) The services provided during August 1998 to July 2001 period, in respect of which service tax has been demanded, relate to system improvement, work – study etc., which, clearly, are Management Consultancy services.

(ii) Employment of only Scientists or Engineers does not make any difference as even a Technocrat can give Management Consultancy Service. In this regard, judgment of the Tribunal in the case of **Parasmal Bam vs. Commissioner of Central Excise, Indore** reported in **2006 (3) S.T.R. 73 (Tri. – Del.)** was cited wherein it was held that there is nothing in the definition of 'Management Consultant' from which it can be concluded that a 'Management Consultant' should have any particular academic or professional qualification.

3. We have given careful consideration to the submissions from both the sides.

3.1 "Scientific & Technical Consultancy" service became taxable w.e.f. 16/07/01 and as per Section 65 (92) of the Finance Act, 1994, it means "any advice, consultancy or scientific or technical assistance, rendered in any manner, either directly or indirectly, by a scientist or a technocrat, or any science or technology institution or organization, to a client, in one or more disciplines of science or technology.

3.2 Management Consultant's Service is taxable since 16/10/98 and definition of Management Consultant during the period of dispute, is any person providing any service, either directly or indirectly, in connection with management and includes any person who renders any advice, consultancy or technical assistance relating to conceptualizing, devising, development, modification, rectification or upgradation of any working system of any organization.

3.3 During August 1998 – July 2001 period, the Appellant conducted various studies and organized seminars for their clients in the areas like – prioritisation of land user for higher productivity, prioritisation of cooperative plans, system study and improvement proposals, design and development of quality management system etc. as listed in Annexure A & B to the show cause notice. According to Revenue, these activities are covered, by the definition of 'Management Consultancy' and on this basis service tax has been demanded from the Appellant on the gross amount received for these projects from their clients. According to Respondents, all these activities are, in general, scientific and technical consultancy.

4. On going through the projects listed in Annexure A & B to the show cause notice, we find that except for 8 projects out of total of 223 projects, all these projects relate to :-

(a) energy audit/technical advice on economizing electric or thermal energy ;

(b) Technical guidance for computerization ;

(c) Quality audit/design & development of quality management/system ;

(d) production system design ;

(e) TQM study ;

(f) Design & Development of Environment Management

(g) Study for optimizing manpower deployment & work load study ;

(h) Design & Development of quality management system ;

(i) Study for optimizing time standards (which involves scientific calculation of output for worker)

(j) Process optimization & cost reduction ;

(k) study of biomass ;

(l) Production system design, and

(m) ISO certification.

We are of the view that all these projects involve giving scientific or technical advice in the areas of some or other disciplines of Science or technology. The projects at (f) and (k) are obviously Environment Engineering project. The remaining categories of projects pertain to optimizing the efficiency and output of an industry or an organization and hence the same pertain to the discipline of Industrial Engineering. We are supported in our view from the exposition of the term 'Industrial Engineering' in World Book Encyclopedia (Vol.6), which is reproduced below, -

"Industrial Engineering applies to engineering analysis and techniques to the production of goods and services. Industrial engineers determine the most economical and effective ways for an organization to use people, machines and material. Industrial Engineers also develop training and job evaluation programmes, and work performance standards and help determine wages and employee benefits. They work to solve problems such as high costs, low productivity and poor product quality.

an organization and to evaluate the effects of proposed changes. Their work requires knowledge of economics, psychology, and personnel management. Industrial Engineers work in a wide variety of business and industries, including banks, construction and transportation firms, Government agencies, hospitals and public utilities."

4.1 As regards the projects for - system improvement in Punjab health service, social security and Women and Children Welfare Department etc., these projects also involve conducting scientific study by technical experts for optimizing the available manpower and resources and therefore, these projects would also fall in the category of scientific & technical consultancy.

4.2 We are, therefore, of the view that all the projects listed in Annexure A & B to the show cause notice, fall in the category of 'Scientific or Technical consultancy'.

4.3 We also find that as per the Appellant, who are recognized by the Ministry of Science & Technology, their main objectives are -

(a) Increasing productivity in all spheres of industries and to pave the way for launching productivity drive in all spheres of economic activity of the country and ;

(b) Undertaking scientific research activities related to productivity.

4.4 Thus the thrust of the Appellant's activity is conducting scientific research related to productivity and undertaking technical study in this regard for their clients and tendering advice to them for optimizing their productivity. In view of this we hold that out of the two competing entries – 'Management Consultancy' and 'Scientific or Technical Consultancy' the Appellant are more appropriately covered by the later.

5. In view of the above discussion, the impugned order passed by the Commissioner is not sustainable and the same is set aside. The appeal is allowed.

(Pronounced in open court on 1·8·08)

(S.S. Kang)
Vice President

(Rakesh Kumar)
Member (Technical)

PK