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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/45 /2007 - CU[DB] Date 27/01/2009

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

To :
SHERVANI INDUSTRIAL SYNDICATE LTD
HARWARA SULEM SARAI, ALLAHABAD.

SHERVANI INDUSTRIAL SYNDICATE LTD Appellant
Vs
C.S.T ALLAHABAD Respondent

I am directed to transmit herewith a certified copy of **Final order No. ST/56 2009 CU[DB]** dated 23.01.09 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
   C.S.T ALLAHABAD
   38, M. G. MARG, CIVIL LINES, ALLAHABAD.
2. Adv. / Consult
   MR.S R BATLIBOI & CO
   THE CAPITAL COURT LSC PHASE III, OLOF PALME MARG, MUNIRKA, N DELHI
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 - 3
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
13. Taxindiaonline.com Pvt.Ltd, B-XI/8183,Vasant Kunj, New Delhi - 110070
14. Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road,Ahmedabad-15
15. Office Copy
16. Guard file

Assistant Registrar
(Customs Appeal Branch)

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

West Block No.2, R.K.Puram, New Delhi

COURT-III

Date of hearing: 28.11.2008
Date of pronouncement: 23 .1.2009

Service Tax Appeal No.45 of 2007

Arising out of the order in appeal No.17/ST/ALLD/2006 dated 12.10.06 passed by the Commissioner (Appeals), Customs , Central Excise & Service Tax, Allahabad.

For Approval and Signature:

Hon'ble Mr. M. Veeraiyan, Member (Technical)
Hon'ble Mr. P.K. Das, Member (judicial)

1	Whether Press Reporter may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	No
2	Whether it should be released under Rule 27 of CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	No.
3	Whether their Lordships wish to see the fair copy of the Order?	Seen
4	Whether Order is to be circulated to the Departmental authorities?	Yes

Appellants — Respondent

M/s Shervani Industrial Syndicate vs. Commissioner, Central Excise, Customs & Service Tax, Allahabad

Appearance:

Shri Amit Bhagat and Shri Lakesh Pandey, Consultants for the appellants
Shri A.K. Madan, Authorized Departmental Representative (DR) for the Revenue

CORAM: Hon'ble Mr. M. Veeraiyan, Member (Technical)
Hon'ble Mr. P.K. Das, Member (Judicial)

Final

Order No. 57/56/09

Per P.K. Das:

The appellant filed this appeal against the order in appeal No. 17/ST/ALLD/2006 dated 12.10.06 passed by the Commissioner (Appeals), Allahabad.

2. The instant appeal arises out of the remand order of the Tribunal vide Final Order No.ST/63/06-ST dated 25.1.2006 . The relevant portion of the said order is reproduced below:

> ***"5. We find that on one hand, the Commissioner (Appeals) has given finding without discussing the terms of agreement that the appellants are not "Consulting Engineer" and on the other hand, he has also given finding that the appellants are "Management Consultant", but in his final order, he has upheld the order of the Assistant Commissioner. Thus, the order of the Commissioner (Appeals) is contradictory to his findings and the real controversy which was before him in the appeal filed by the appellants was not examined in terms of the agreement. We, therefore, set aside the order of the Commissioner (Appeals) and remand the case to him for a fresh decision after taking into consideration the grounds taken by the appellants and the agreement entered into by them with M/s Gillete and other relevant records and decisions of the higher forum for coming to the correct conclusion in accordance with law. Opportunity of hearing also be afforded to the appellants before deciding the appeal in accordance with law."***

3. The relevant facts of the case, in brief, are that the appellants were engaged in the manufacture of "Batteries" in their factory. They sold one of its units "Zinc Chloride batteries" having manufacturing facilities located at Mysore to M/s Gillete Diversified Operation Limited (in short, "M/s Gillete"). Thereafter, M/s Gillete requested the appellant to render specialised "Technical Advisory Services" in the said unit and entered into agreement with them. The appellant received fees for providing Technical Advisory Services from M/s Gillete. Show cause notice dated 31.3.2003 was issued proposing demand of tax on the fees of "Technical Advisory Services" for the period from 1.1.2000 to 30.9.2002 under the category of "Consulting Engineering" and "Management Consultant Service". Adjudicating authority confirmed the demand of tax under the category of 'Consulting Engineering'. Commissioner (Appeals) observed that the service

would come under the definition of "Management Consultant" and upheld the Adjudication Order. The Tribunal vide order dated 25.1.2006 remanded the matter to Commissioner (Appeals) as stated above. In remand order, the Commissioner (Appeals) upheld the demand of tax and penalties under the category of "Management Consultant" services. Hence, the appellant filed this appeal.

4. The learned Consultant on behalf of the appellant submits that on perusal of the agreement, it is apparent that the appellant provided "Technical Advisory Services" for manufacturing operation, which cannot come within the definition of "Management Consultant". He drew attention of the Bench to the relevant portion of agreement of the "Technical Advisory Services". He further submits that the appellant company has no connection with the Management of M/s Gillete. He submits that the definition of "Management Consultant" under Section 65 (37) of the Finance Act, 1994 would apply to a person, who is engaged in providing any service in connection with the management in any manner. It is his contention that the appellant company is a manufacturing unit and advised Gillete on the manufacturing operation which cannot come within the definition of Management Consultant. He relied upon the decision of the Tribunal in the case of (i) Shree Sidhbali Steels Ltd. vs. C.C.E., Meerut – 2007 – TIOL – 1756 – CESTAT – Del. (ii) National Productivity Council vs. C.C.E.,Chandigarh – 2006 (4) STR 110 (Tri-Del.) and filed case law compilation.

5. Learned DR reiterates the findings of the Commissioner (Appeals). He submits that it is revealed from the Agreement that the appellant was rendering specialised technical advisory service to M/s Gillette. He also submits that "Management Consultant" means any person who is engaged for providing any service in connection with the management in organization in any manner. He emphasised that the words " management in any manner" include technical service. In the present case, the appellant company provided the services to Gillete in technical advisory services, which includes within the definition of the Management Consultant. He relied upon the Board's Circular No.1/1/2001-

ST(Section 37-B), dated 27.6.2001 F.No.177/2/2001-CX.4. He also relied upon the decision of the Tribunal in the case of Parasmal Bam vs. C.C.E., Indore – 2006 (3) STR 73 (Tri-Del.).

6. After hearing both sides and on perusal of records, we reproduce the relevant portion of the agreement, for the purpose of proper appreciation of the case, as under:-

"WHEREAS

(a) SISL is, inter alia, engaged directly in the business of manufacture, sale and supply , inter alia, of batteries for the domestic and export market.

(b) SISL has valuable knowledge, expertise and experience in the field of manufacture of batteries.

(f) GDOL have acquired a Zinc Battery manufacturing facility at Mysore, Karnataka from SISL and is presently engaged in the business of contract manufacture of batteries for its group company Gillette India Limited under a contract;

(g) GDOL , however, and does not have the expertise in the field and is desirous to source the same from a firm having such expertise.

(h) GDOL has requested SISL to render specialised Technical Advisory Services on a continuous basis to produce the products at the existing manufacturing facilities of GDOL which SISL has agreed to do upon the terms and conditions hereinafter contained.

xxx xxx xxx

DEFINITIONS

In this Agreement , the following words and expression unless inconsistent with the context, shall bear the meanings assigned thereto:

"Agreement" shall mean this Technical Advisory Agreement along with Attachments and shall include any modifications and alterations hereto made in writing after the date of execution of this Agrement.

"Technical Advisory Services" shall mean SISL's specialised technical advice with regard to processes, incoming materials, and quality, process descriptions and operating information, factory lay out, factory management techniques, manufacturing techniques, engineering data, testing procedures, safety and environment management, technical knowledge, design, information and data, for the manufacture and quality control of the products".

xxx xxx xxx

1. **SERVICES AGREEMENT**

1.1 SISL shall render to GDOL Technical Advisory Services to manufacture the products in India subject to the terms and during the terms of this agreement on a continuous basis. The term of this agreement shall be one years from 1.1.2001 i.e. upto 31.12.2001.

xxx xxx xxx

3. **TRAINING**

3.2 During the term of this agreement and GDOL , may discuss the need for training its personnel in the manufacturing facilities of SISL. All training shall be for such periods and on such terms as may be mutually agreed upon in writing between GDOL and SISL.

4. **CONSIDERATION**

4.4 In consideration of SISL providing Technical Advisor Services to GDOL, GDOL shall pay SISL Technical Advisory Services fees, subject to taxes applicable of Rs.6,00,00,00/-(rupees six crores only) each on or before the 30th June 2001 and 31st December 2001 respectively."

xxx xxx xxx

SCHEDULE

"Ongoing Technical services

a) to assist GDOL to maintain all the equipment and the manufacturing facilities generally in good operating condition and advise on any reconditioning , replacement of other special steps required.

b) to provide guidance and suggestions to GDOL so that manufacturing facilities remain at the same SISL standard by means of process and quality control improvements.

c) to carry out audit and review visits to assess the adequacy of all aspects of GDOL's manufacturing operations.

d) provide to GDOL necessary materials and production specifications for manufacture of the New Products and advise on procedures for effective evaluation of incoming manufacturing materials and supplies".

7. On perusal of the agreement of the parties, we find that the appellant has valuable knowledge, expertise and experience in the manufacture of "Battery". M/s. Gillette requested the appellant to render specialized technical advisory services to produce the product at the existing manufacturing facility of M/s. Gillette. Thus, it is clear that M/s. Gillette is owning manufacturing facility wherein the appellant was requested to render technical advisory services. It is seen that the appellant rendered advice, consultancy or technical assistance in the working system of M/s. Gillette. So, the submission of the learned Advocate that the agreement speaks only manufacturing operation is not acceptable. We noticed that the schedule to the agreement indicates to assist, to provide guidance, to carry out audit and review of all aspects of M/s. Gillette manufacturing operation.

8. Now, let us examine as to whether the "Technical Advisory Services" rendered by the appellant to M/s Gillete would come within the purview of definition of "Management Consultant" under Section 65 (65) of the Finance Act, 1994.The definition of "Management Consultant" (as it is stood during relevant period) is reproduced below:-

> ***"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 conceptualizing, devising, development, modification, rectification or upgradation of any working system of any organisation."

9. On perusal of the definition of "Management Consultant", it appears that the following activities would be liable to levy tax:-

(a) Any service, either directly or indirectly, in connection with the management of any organization in any manner; and

b) It includes any advice, consultancy or technical assistance, relating to conceptualising, devising, development, modification, rectification or upgradation of any working system of any organization.

10. The word "management" as per New International Webstor's Comprehensive Dictionary of English language means, "art or act of managing the manner of directing or of using anything; administration, skillful treatment, a body of managers". As per Concise Oxford Dictionary, 10th Edition, "management" means "process of managing, the people managing any organization". In the Law Lexicon Dictionary, it is termed as "government control, Superintendence , physical or manual handling or guidance; act of managing by direction or regulation or administration as management of family or of house-hold or servant or of great enterprises or of great affairs." The word "consultant" in the New International Webstor's Comprehensive Dictionary of English Language, means, "a person who seeks professional advice or takes part in consultation; the most senior group of doctors in a given speciality in a hospital; a person who seeks advice or information".

11. In earlier days, the term "Management" was understood by the Board of Directors or by Apex Body or the Executive Body of the Organization, who regulates, supervises, directs and controls the affairs of the organisation. Now, the term " Management" has to be looked, in the context of rapidly growing profession of management consultancy. The management consultancy is

available in various areas, such as, planning, technical advice, co-ordination, staffing, controlling labourers, etc. It is seen from the definition of the "Management Consultancy" in the Finance Act, 1994, it has widen the scope by the words "management of any organisation in any manner". It includes any advice, consultancy or technical assistance. In this context, a reference may be made to CBEC Circular No.1/1/2001-ST (Section 37-B) dated 27.6.2001, wherein the Board discussed the scope of taxable service provided by "Management Consultant", as under:-

> ***"7. In this regard, the Board had consulted the Indian Institute of Management, Ahmedabad for obtaining an expert opinion on the subject matter. They have opined that the term "Management" is generally understood to mean running the affair of an organisation in an organised and systematic manner. To be able to do this efficiently and effectively, management typically involves carrying out a host of activities, functions and tasks and at different levels. Thus management encompasses both strategic and operational level functioning and would include tasks such as planning, organising, staffing, directing, controlling and coordinating. Management also invariably involves designing organisational structure around functions such as marketing, manufacturing, research and development and finance and/or business area such as product groups or geographical markets. Thus management of any organisation involves carrying out a wide variety of clearly defined activities across a number of organisational sub-units in a coherent and coordinated manner. Since the expression "Management" is an inclusive term, 'management consultant' would also be equally encompassing expression and would include any adviser who renders services on any aspect of management. They have further opined that financial advisory services rendered in merger and acquisition transactions are clearly in the nature of services in connection with the management of an organisation as merger and acquisition themselves are important dimension of modern management.***
>
> ***8. After considering the ILO publication on "management consulting", various other literature on the subject, management practices and profiles of practicing management consultants they have concluded the following: (i) the term 'management' is a broad term to cover the various functions and the multifarious activities required for its efficient and effective functioning; (ii) management consulting is not restricted, but is wide enough to include advisory services rendered on any aspect of management; (iii) merger and acquisition are an important aspect of management of any organisation today; and (iv) advisory services, including financial advisory services,***

for merger and acquisition clearly fall with in the realm of management consulting."

12. In the present case, on perusal of the agreement, we find that " "Ongoing Technical Service" as indicated in the Schedule to the Agreement is in the nature of assistance, advising guidance, in various manner. Therefore, in our view, the appellant was rendering management consultancy in the organisation of M/s Gillete, in the manner of technical advisory service and such service is covered under the category of "Management Consultant" as defined in Section 65(65) of the Act. Therefore, the levy of tax is justified.

13. The case laws relied upon by the learned Advocate are not applicable in the present matter as under:-

(i) M/s. Larsen & Tubro Ltd. vs. CCE, reported in 2006 (3) STR 321 (Tri.-LB) - The case relates to determining the issue as to whether procurement of orders on behalf of the principals would be covered under the definition of "Clearing & Forwarding Agent". It has been held that the expression, "directly or indirectly" and "in any manner" cannot be isolated from definition.

(ii) Kerala State Housing Board and others vs. Ramapriya Hotels (P) Ltd. and others, reported in (1994) 5 SCC 672 - The Hon'ble Supreme Court in this case while referring Caries on Statute Law, 7th Edition stated that "... one of the safest guides to the construction of sweeping general words which it is difficult to apply in their full literal sense is to examine other words of like import in the same instrument, and to seek what limitation must be imposed on them.

(iii) National Productivity Council vs. CCE, reported in 2006 (4) STR 110 - The Tribunal in this case while deciding the Stay Application and while prima facie determining the scope of 'management consultancy service' observed that the definition of management consultancy service is, of course, in very broad terms. But that does not mean that any and every advise would be a Management Consultancy Service.

(iv) Zee Telefilms Limited vs. CCE, reported in 2006 (4) STR 349 - The Tribunal while determining the scope of the definition of 'advertising agency' observed that the definition of 'advertising agency' cannot be read literally and out of context, if done so then every person some way connected with an advertisement will be advertising agency.

(v) Board of Control for Cricket in India vs. CST, reported in 2007 (7) STR 384 -= The Tribunal in this case while determining whether BCCI would fall under the definition of 'advertising agency' observed that "the definition of advertising agency cannot be read in isolation and out of context. Even if the services provided by the appellant is broadly covered by the expression "exhibiting" or "displaying" of advertisement, but when viewed in the context.

14. However, we find force in the submissions of the learned Advocate that there was scope for difference in interpretation and hence for entertaining a view that there was no levy of tax and therefore, the demand of tax for the extended period of limitation would not be applicable. We also noted that the issue involved in this case is the interpretation of the provision of the Finance Act and the penalties are not warranted. Accordingly, the demand of tax for the normal period of limitation is upheld. Penalties are set aside. The appeal is disposed of in the above terms.

(Pronounced in open Court on 23 .1.2009)

(M. Veeraiyan)
Member (Technical)

(P.K. Das)
Member (Judicial)

scd/