

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

Appeal No. ST/320 /2008 - CU[DB]

Date 06/06/2012

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

To :
M/S ERNST & YOUNG PVT LTD
(1).S.NANDA KUMAR ADVOCATE,5A/198-
199,W.E.A.,KAROL BAGH,NEW DELHI-5

(2).B-26,QUTAB INSTUTUTIONAL AREA,NEW DELHI,

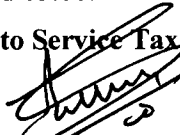
M/S ERNST & YOUNG PVT LTD

Appellant

C.C.E. DELHI I

Vs
Respondent

I am directed to transmit herewith a certified copy of **Final order No.ST/A/429/ 2012 CU[DB]** dated 05.06.12
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.C.E. DELHI I
C.R. BUILDING, I.P. ESTATE, NEW
DELHI 110002

2. Adv. / Consult
MR.S.NANDA KUMAR ADVOCATE
5A/198-199,W.E.A.,KAROL BAGH, NEW DELHI-5

3. C.D.R
4. Bar association, CESTAT, New Delhi
5. Director Publications, Customs, Excise. I.P. Estate, New Delhi
6. M/s Centax Publications Pvt Ltd.,1512-B, Bhishm Pitamah marg,Opp. ICICI Bank of Defence Colony, New Delhi-3
7. Company Law Institute of India Pvt Ltd.,No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17
8. Taxmann Allied Service Pvt Ltd., 59/32, New Rohtak Road, New Delhi - 110005
9. Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road, Ahmedabad-15
10. LAWCRUX Advisors Pvt Ltd, LAW House,1-8,Sector - 10, Faridabad 121003 (Haryana)
11. TaxIndiaOnline.com Pvt Ltd., Unit No.1, 2nd Floor,Vasant Arcade,Nelson Mandela Road, Vasant Kunj, New Delhi - 110070

12. Office Copy

13. Guard file


Assistant Registrar
(Customs Appeal Branch)

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

Date of Hearing : 30.3.2012
Date of Pronouncement : 5-6-12

Service Tax Appeal No. 320 of 2008

[Arising out of Order-in-Original No. 13/VKG/CST/2008 dated 31.1.2008 passed by the Commissioner of Service Tax, New Delhi]

For Approval & Signature :

Hon'ble Ms. Archana Wadhwa, Member (Judicial)
Hon'ble Shri Mathew John, Member (Technical)

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 would be released under Rule 27 of the 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 Department Authorities?	Yes

M/s Ernst & Young Pvt. Ltd.

Appellants

Vs.

CST, New Delhi

Respondent

Appearance:

Appeared for Appellant : Shri N. Venkataraman, Sr. Advocate
Ms. Suveni Banerjee, Advocate
Shri S. Nand, Advocate

Appeared for Respondent : Shri R.K. Gupta, A.R.

CORAM: Hon'ble Ms. Archana Wadhwa, Member (Judicial)
Hon'ble Shri Mathew John, Member (Technical)

Final Order No. STA/429/12-Ces dated.....

Per **Mathew John** :

The Appellants are engaged in the business of providing services of management consultancy, manpower recruitment, consulting engineer etc. During the period 2001-02 to 2004-05

they also provided assistance in required for complying with the regulation of Reserve Bank of India, Foreign Investment Promotion Board etc. and also for filing application for import export code, returns under Income Tax Act, returns with the office of Registrar of Companies, sales tax returns etc. which activities are hereinafter collectively referred to as "Compliance Services"

2. The entry in Finance Act, 1994 for taxing Management Consultancy Service came into force on 16.10.98 and ever since that date they have been paying service tax on activities which they classified under the entry in the Finance Act 1994 for Management Consultancy Service. However, they did not consider that Compliance Services would fall within the definition of Management Consultancy Service and they were not paying service tax on such activities.

3. Revenue was of the view that the appellant had short paid service tax for the period 2001-2002 to 2004-2005 being tax payable on consideration received for such Compliance Services provided. Based on such reasoning, a Show Cause Notice was issued to the appellant on 20.10.2006 demanding service tax to the tune of Rs.3,53,05,405/- on such services provided during the said period.

4. Section 65(65) of Finance Act 1994 defined Management Consultant as under:

"Management Consultant means any person who is engaged in providing any services, 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 up-gradation of any working systems of any organisation."

5. The Counsel for the appellants agrees that management would encompasses both strategic and operational level functioning and would include tasks such as planning, organising, staffing,

directing, controlling and co-ordinating. He argues that the primary purpose of complying with rules and regulations of the country is only a responsibility of Managers and does not fall within the functions which are considered to be the core of management functions. He submits that when the relevant entry was introduced by Finance Act, 1994, industrial law practitioners, had approached the Director General of Service Tax for clarification in the matter as to whether activities in relation to complying with rules and regulations would come under the scope of "Management Consultancy Service". The Director General of Service Tax vide letter No V/DGST/21-26MC/9/99 dated 28-01-99 clarified that such activities would not be part of Management Consultancy Service. This view was reiterated in a letter F. No. 341/21/99-TRU dated 20-08-99 issued by TRU clarifying that practitioners who help in complying with ESI and PF Regulations would not come within the meaning of Management Consultant. They argue that these clarifications reinforced their own interpretation that service tax was not payable on such activities and that is the reason why they were not paying service tax on the impugned activities. The appellant also pleads that the show cause notice issued in 20.10.06 demanding tax for the period 2001-2002 to 2004-2005 is clearly time-barred because this is a matter involving interpretation of law and they have acted bonafidely, by acting on the advice given by the Director General of Service Tax.

6. The counsel for the appellant relies on the following clarifications issued by the CBEC in this regard.

- (i) Board's Instruction letter issued from file No. 341/21/99-TRU on 20th August 1999 and
- (ii) CBEC Circular No. 1/1/01-ST dated 27th June 2001 explaining the scope of the services covered by Management Consultancy Service.

7. Out of the above two circulars the circular dated 27-06-01 is issued invoking the powers under section 37B of the Central Excise Act and is clearly in the public domain. So we propose to consider

this. While this circular answers the question whether advice in the matter of mergers and acquisitions will constitute management consultancy in the affirmative, it also deals with the issue whether Compliance Service will come within the scope of such services. We reproduce para 9 of this Circular as under:

*"9. Taking into account all the above points, the Board has taken a view that merger, acquisition and other form of restructuring of business organisation have emerged as key element in the modern management and as the term 'management' covers the various functions and the multifarious activities required for efficient and effective functioning of an organisation, any advisory services rendered in merger and acquisition transaction are also includible under the taxable service rendered by 'management consultant'. **However, those agencies providing services as per the requirement of any statute or regulation such as Takeover Regulations of SEBI and, if their role is limited to the compliance of such act or regulations and not governed by any contractual relationship with the advisee company, then such services will not be covered under the scope of 'management consultant'.**"*

8. The Counsel also relies on the decision of the Tribunal in **CCE, Chennai Vs. Future Polyesters Ltd.** – 2011 (24) STR 751 (Tri.-Chennai) ruling that such services will not be taxable under section 65(105)(zr).

9. The Counsel also relies on the following decisions to canvass the argument that when there is a bona fide reason for not furnishing information in the returns that will not amount to

suppression of facts within the meaning of the expression used in section 73 of the Finance Act, 1994.

(1) **Pushpam Pharmaceuticals Company Vs. CCE** - 1995 (78) ELT 401 (SC).

(2) **Wallace Flour Mills Co. Ltd. Vs. Collector** - 1989 (44) ELT 598

10. The Id. A.R. for Revenue submits that the Tribunal in the case of **PARASMAL BAM Vs.CCE-2002** (146) ELT 717 (T) held that even giving the advise to a company on matters relating to production, marketing, financial matters etc. will come within the meaning of Management Consultancy Service as defined under Section 65(65) of the Finance Act, 1994. He submits that without the impugned Compliance Services the receiver of the service could not have carried on with their management functions and therefore service tax was payable on Compliance Services also. Id. A.R. points out that nature of service provided by the appellants as recorded in the order-in-original as recoded in para 30.2 and 30.3 of the impugned order are the following:-

"30.2 *The Noticee, in their reply have stated that the services provided by them in this area relate to providing regulatory services such as obtaining registrations, and filing of returns under various statues as well as pay roll and financial accounting services, further detailed as follows :*

- **Immigration services** : *Relating to assistance provided to expatriates for obtaining registration with the Foreigners Regional Registration office;*
- **Litigation support** : *Assistant in preparation and filing of replies to notices issued by department, attending hearings and various other litigation support services;*
- **Personal tax** : *Assistance in preparation and filing of Indian tax returns for Indian nationals outside India as well as for expatriates in India;*
- **Private Client Services** : *Assistant in preparation and filing of returns setting up trust funds, etc. for high net worth individuals;*

- **Stock Incentive Plans** : Various compliance services in relation to stock options such as preparation and filing of the plans with the income tax authorities.
- **Tax Withholding** : Assistant in preparation of Tax Deducted at Source ('TDS') returns and filing the same with the income tax authorities.
- **Domestic Taxation** : Assistant in preparation of corporate tax returns other documents such as registrations, IEC code, replies to notices, etc. with the VAT authorities/Service tax authorities/customs authorities/excise authorities/Director General of Foreign Trade ('DGFT'), attending hearings before the authorities etc;
- **International Tax Services** : Assistance and representing clients before the tax authorities;
- **Foreign Investment Promotion Board ('FIPB') Related** : Assistance in preparation and filing of various applications, following up with the authorities and obtaining approvals;
- Assistance in preparation and filing of various applications and other documents with the various authorities such as the Registrar of Companies, etc. follow up with the relevant authorities and obtaining approvals, if any;
- **Reserve Bank of India ('RBI') Related** : Assistance in preparation of application for opening and closure of liaison/branch office and various other documents, filing of documents and follow up with the RBI authorities.

30.3 Further, they have also claimed to provide assistance to clients with respect to the following services;

- (i) **Payroll** : Payroll services for client like set up cost for new employees, Expat Charges, Final Settlement, Professional tax, returns, Provident Fund returns, etc; and
- (ii) **Financial Accounting** : Maintaining the books of accounts for the clients, filing their withholding tax returns, etc."

11. The Id. A.R. submits that the key words in the definition are that :

- (a) the person must be engaged in providing any service, either directly or indirectly in connection

with the management of any organisation in any manner, and

- (b) includes any person who renders any advice, consultancy or technical assistance, relating to conceptualizing, devising, development, modification, rectification or up-gradation of any working system of any organisation.

12. According to him the above definition is extremely broad, as it encompasses any service that is directly or indirectly provided in connection with the management of any organisation in any manner. The latter portion of the definition includes certain specific services, which include any advice or consultancy or technical assistance relating to conceptualizing, devising, development, modification, rectification or up-gradation of any working system of any organisation. The latter inclusive part of the definition does not restrict the scope of the initial part which defines the service. He relies on the definition of Management given in various Dictionaries as quoted in the impugned order and also the decision of the Apex Court in the case of **CCE Vs. Parle Exports (P) Ltd.**-(1989) 1 SCC 345.

13. The Id. A.R. also points out that the appellants did not include the amount realised by rendering such Compliance Services in their ST-3 returns and the department had no opportunity to know that they were doing such activities amounting to Management Consultancy and not declaring it in returns filed with service tax department. Therefore the provisions regarding suppression of information from the department is correctly invoked against the appellant and therefore extended period of time is invokable for making the demand.

14. We have considered arguments on both the sides. We find that the decisions of the Tribunal in the case of **Futura Polyesters Ltd.** (Supra) quoted above is clearly to the effect that most of the impugned activities could not fall under the definition of

Management Consultancy Service. We are of the view that though compliance with laws is part of the responsibilities of management such responsibility per se cannot bring it into the ambit of the words "in connection with the management of any organisation" used in section 65(105)(r) and section 65 (65) of Finance Act, 1994 to tax such services. In this matter we see merit in the clarification given by CBEC in para 9 of its circular dated 27-06-2001. The decision of the Apex Court in the case of **Parle Exports (P) Ltd** (Supra) gives the rule that a taxing entry should be understood in the same way in which these are understood in the ordinary parlance. According to CBEC the ordinary meaning of management will not cover Compliance Services. According to the adjudicating authority ordinary meaning of management covers Compliance Services. We concur with the view of CBEC and reject the view of the adjudicating authority, since in our view every responsibility of management cannot be considered as management function. For example the management may have a responsibility to set up a canteen in a factory employing large number of workers. A person who gives advice on initial setting up of that canteen cannot be considered to be giving Management Consultancy Service. Out of the various impugned services, the services in the matters before FIPB there could be a doubt as to whether the service was in connection with management function or in connection with compliance of regulations. Since there is no such examination in the impugned order and since we find the demand to be time barred we are not dealing with this issue in detail.

15. The adjudicating authority has chosen to ignore the Circular of CBEC. But we would not like to ignore the decisions of Tribunal quoted before us. In the case of **Prasmal Balm** (Supra) the advice being given by the consultant was in the core functions of management namely production, marketing, finance and not for compliance services. The decisions of the Tribunal in the case of **CCE Vs. Futura Polyesters Ltd . - 2011 (24) STR 751 (Tri.-Chennai)** relates to Compliance Services and that has to be followed in this case.

16. Further this is clearly a case where the demand is time-barred because the appellants were acting on the basis of a circular issued by CBEC, invoking the powers under section 37B of Central Excise Ac,. If the public act relying on such circulars and still the charge of suppression is slapped on them it can be the worst travesty of justice. So there is no case for invoking suppression in this case.

17. For the above reasons the appeal is allowed both on merits as well as on the ground that the notice is barred by time limit specified under section 73 of Finance Act, 1994, since no extended period of time could be invoked for issuing demand in this case.

(Pronounced on...5/6/12...)

(~~Ar~~chana Wadhwa)
Member (Judicial)

(~~Mathew~~ John)
Member (Technical)

RM*