

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL,
NEW DELHI, PRINCIPAL BENCH NEW DELHI

Date of Hearing:03/04/2017
Date of Decision:19/04/2017

Service Tax Appeals Nos. 342/2012 and
Appeal No.ST/50304/2014

[Arising out of Order-in-Remand No.24/COMMR/ST/ADJ/BPL-I/2011 dated 22.12.2011 and Order-in-Original No.29/COMMR/ST/BPL-I/2013 dated 26.09.2013 of the Commissioner of Central Excise & Customs, Bhopal]

M/s.Madhya Pradesh Consultancy Organisation Ltd. Appellant

Vs.

CCE, Bhopal Respondent

Appearance:

Rep. by Ms.Shreya Dahiya, Advocate for the appellant.
Rep. by Shri Amresh Jain, DR for the respondent.

Coram: Hon'ble Shri S.K. Mohanty, Member (Judicial)
Hon'ble Shri B. Ravichandran, Member (Technical)

Final Orders Nos.52927-52928/2017

Per B. Ravichandran:

These two appeals are dealing with the similar dispute involving the same appellant and hence are taken up together for disposal.

2. The appellant is an organization registered under the Companies Act, promoted jointly by several financial institutions including Madhya Pradesh State Industrial Development Corporation, Madhya Pradesh Laghu Udyog Nigam, Madhya Pradesh Financial Corporation, IFCI, IDBI and ICICI along with other certain other nationalized banks. They are engaged in providing consultancy services to private sector and are registered with the Service Tax Department to

discharge service tax under the category of “Management, Consultancy Services”. The appellants also carried out various research, development project, training programmes, acting as nodal agency on behalf of different Ministries of the Central Government and Madhya Pradesh Government. They received grants-in-aid in respect of these activities from the concerned Ministries. The Revenue entertained a view that the appellants are liable to service tax in respect of these activities carried out on behalf of the various government Ministries. Accordingly, proceedings were initiated to demand and recover service tax on such consideration received from the Government, under the category of “Management, Consultancy Services”. The Original Authority adjudicated the cases. In the impugned orders, the Original Authority confirmed the service tax liability of Rs.82,25,013/- and Rs.95,65,343/- under the category of “Management Consultancy Services”. A further demand of Rs.2,34,646/- was also confirmed by denying cum-tax benefit to the appellant. Rs.22,500/- and Rs.3,049/- were confirmed after denial of cenvat credit availed in respect of certain incomplete documents and catering services respectively.

3. Ld. Counsel appearing for the appellants submitted that the issue was originally decided by the Commissioner vide order dated 14.03.2007. On appeal, the Tribunal vide Final Order dated 29.04.2011 remanded the case back to the Original Authority with a specific direction to examine the decision of the Tribunal in **Apitco Ltd. vide Final Order No. 1113 to 1115 to 2010 dated 22.07.2010** and to decide the issue afresh. The lower authority in the impugned

orders distinguished the decision of the Tribunal in **Apitco Ltd.** and held that the facts of the present case will not be governed by the said decision of the Tribunal.

4. Ld. Counsel submitted that the findings of the lower authority is completely erroneous and the attempt to distinguish the decision of the Tribunal in **Apitco Ltd. (supra)** is without merit.

5. The appellant's organizational set-up, objective and the nature of activities carried out, are identical to that of **Apitco Ltd.** In fact, the Articles of Association of both the organizations are identically worded and are substantially having the same objects of functioning. Similar to **Apitco Ltd.**, the appellants also were entrusted with various project work, research work and training activities, and expenditures are paid by the concerned Ministries, by way of grants-in-aid. The appellants have to account for the said grants and any excess should be returned back to the concerned Ministries. Thus, it can be seen that the appellants were reimbursed the expenditures incurred by them in executing the work assigned to them by various government departments. There is no service provider-client relationship in such arrangement. Reliance was also placed on the Board's Circular dated 9.7.2001, which clarified that the grants received by public funded research institutions from the Government, for conducting research – project work will not attract service tax. Further, reliance was placed on the decision of the Tribunal in **Mineral Exploration Corporation Ltd. -2015 (38) STR 421 (Tribunal-Mumbai)**. The Tribunal held that grants received are towards expenses involved in various activities and hence, it cannot be said that any service has been provided for taxable consideration.

6. Regarding denial of cum-tax benefit, the Id.Consultant submitted that the amount collected from the recipient of service are inclusive of service tax as is evident from the documents. Regarding the cenvat credit of Rs.22,500/-, it is submitted that the credit is rightly admissible as the input services have been availed and service tax has been paid by the appellant. The invoices were in the name of branch and the head office and that by itself cannot be the reason for denial of credit.

7. Ld.AR submitted that receipt of consideration by the appellant in the name of grants-in-aid by itself will not make the service as not taxable. Admittedly, the appellants did provide service, which can be categorized under the various taxable categories like “Consulting Engineer, Convention Service, Management Consultants and Market Research Agency”. The consideration is received in the form of grants-in-aid and the same is a taxable income. The appellants are not part of the Government. They are a corporate entity registered under the company law and promoted by various financial institution and banks. In such situation, it cannot be said that they are an arm of the Government and they are rendering these services as an executory function of the Government.

8. We have heard both the sides and perused the appeal records.

9. We note that the matter was remanded back to the Original Authority with a specific direction to examine the decision of the Tribunal in **M/s.Apitco Ltd. (supra)** with the facts of the present case and to arrive at a fresh decision. However, we note that the Original Authority distinguished the decision of the Tribunal in **M/s. Apitco Ltd. (supra)** in the following manner:-

“ I find that the facts in the present case are dissimilar to the ones of APITCO Ltd. V.CCE, Hyderabad. The instant proceedings do not deal with the issues of relationship between the assessee and government and the scope of ‘scientific or technical consultancy’. I find that the decision in re APITCO Ltd. supra, sought to be relied upon by M/s. MPCON, is not applicable to the instant proceedings in view of difference in facts and the issue involved. In the instant proceedings, the issue involved is whether services rendered by MPCON to various individuals and concerns are chargeable to service tax when the source of money consideration is other than the service receivers.”

10. We note that the above observation is devoid of merit. As noted already, the organizational structure and the memorandum of objectives are almost identical for both Apitco and the appellants. The activities carried out and the consideration received in the form of grants-in-aid are similar for both the parties. We also note that the decision of the Tribunal in **Apitco Ltd.** has been upheld by the Hon’ble Apex Court by dismissing the civil appeal filed by the Revenue vide Order dated 2.5.2011. When the civil appeal is dismissed against the order of the Tribunal, the decision of the Tribunal merges and it is clear that the Hon’ble Supreme Court affirmed the said decision. The Original Authority in his order dated 26.09.2013 observed that the said order of the Hon’ble Supreme Court is only a summary order, which does not record any reasons for dismissal of civil appeal filed against the Tribunal’s order in the case, hence, the same is not a binding precedent. The Original Authority quoted the decision of the Tribunal in **B. Rama Rao &**

Company – 2011 (23) STR 49 (Tribunal-B), wherein it was held that the SLP by the Government filed before the Supreme Court was dismissed and the said dismissal being summary in nature without recording any reasons and as such the same does not lay down any law and is not a binding precedent. Here, we note that the Original Authority failed to appreciate the difference between a civil appeal and an SLP filed before the Hon’ble Supreme Court. The civil appeal is a statutory appeal provided under the law and the decision of the Apex Court in such civil appeal is binding and the order of the Tribunal, which was appealed against merges with the decision of the Hon’ble Supreme Court. The same is a binding precedent for other lower courts to follow. The observation of the original authority to the contrary is devoid of legal merit.

11. Having considered the findings of the original authority as narrated above and on perusal of the decision of the Tribunal (as affirmed by the Hon’ble Supreme Court) in **Apitco Ltd.**, we find that the impugned orders are devoid of merit insofar as they relate to tax liability of the appellant with reference to various works carried out by them for which consideration was paid by the Government through grants-in-aid. For easy reference, we reproduce the relevant portion of the decision of the Tribunal in **Apitco Ltd. :-**

“6. We have given consideration to the submissions. It is not in dispute that the assessee-company had implemented welfare schemes for the Central and State governments for the benefit of the poor or otherwise vulnerable/weaker sections of the society and collected grants-in-aid from the governments concerned. It is not in dispute that these grants-in-aid had been totally utilized for implementing the welfare schemes. Nothing over and above

these grants-in-aid was received by the assessee from any of the governments. In other words, the assessee did not receive any consideration for “any service” to the governments. Therefore, we hold that, in the implementation of the Governmental schemes, the assessee as implementing agency did not render any taxable “service” to the government. The department seems to be considering the Governments to be “clients” of APITCO. The question now is whether there was “service provider-client” relationship between the assessee and the governments. Here, again the nature of the amounts paid by the governments to the assessee is decisive. A client must not only pay the expenses of the service but also the consideration or reward for the service to the service provider. Admittedly, in the present case, there was no payment, by any government to the assessee, of any amount in excess of what is called “grants-in-aid”. Thus any service provider-client relationship between the assessee and the governments is ruled out. It is true that the assessee has executed the governmental schemes mainly through their engineers (technocrats) but this was not enough for the revenue to bring the assessee within the ambit of ‘scientific or technical consultancy’ as clearly held by this Bench in the case of *Administrative Staff College of India (supra)*. An organization rendering “scientific or technical consultancy” service under Section 65(105)(za) of the Finance Act, 1994 must be a science or technology institution. The assessee-company has not been shown to be such an institution. Moreover, the revenue has failed to show that any scientific or technical advice or consultancy or assistance was rendered by the assessee to the governments. Many of the activities in question, such as micro-enterprises development, training programmes, project planning, infrastructure planning etc., are apparently in the nature of

projects involving application of social science principles. The revenue has not shown that any techniques or principles of pure and applied sciences were applied in the implementation of the governmental schemes by the assessee. In the case of *Administrative Staff College of India (supra)*, this Bench held that, as the research activities of the assessee (Administrative Staff College) were related to social science, they would not be within the ambit of “scientific or technical consultancy” and hence no service tax could be levied under that category, which view is squarely applicable to the facts of the present case. The view taken by the Tribunal in the above case stood affirmed by the Apex Court in the above case within the dismissal of the department’s Civil Appeal filed against the Tribunal’s order.

7. For the reasons noted above, we hold that any amount of service tax is not leviable on the grants-in-aid received by the assessee from the governments, as project-implementing agency of the government, during the period of dispute.”

12. We have perused the various documents submitted by the appellant relating to the scope of activities and the method of payment received from various departments/Ministries of the Government. The project works assigned to the appellant are in the nature of various welfare activities carried out by the Government in public interest. These are counseling, re-training and redeployment of rationalized employees of Central Public Sector Enterprises, and Entrepreneurship Development Programme with reference to production of specific products, skill development training programme through Science and Technology etc. The appellants were to submit full records of the expenditure with

reference to each project to the concerned Ministry. Any surplus of the amount given as grant should be returned to the Government. We find that the decision of the Tribunal in **Apitco Ltd. (supra)**, as above, is squarely applicable to the facts of the present case and accordingly, we hold that the appellants are not liable to service tax in respect of these activities carried out, by using the grant-in-aid given by the various Ministries/departments of the Government.

13. With reference to demand of Rs.2,34,746/- on the ground that instead of paying service tax on the gross amount, the appellant paid service tax by treating the gross amount as cum-tax-receipt inclusive of tax, the appellants submitted that the invoices raised are inclusive of taxes. In terms of Section 67(2) of Finance Act, 1994, they are entitled for calculating the tax by treating the amount as inclusive of tax. We note that the Original Authority did not give any detailed finding for demanding such short levy. He simply reproduced a case law, which states that Section 67(2) will be applicable only in cases where the gross amount includes service tax. Though the appellant claimed in the appeal that the invoices indicated that the amount is inclusive of service tax, no evidence is submitted to support such contention. As such, we find that the same requires verification of the actual invoices by the jurisdictional officer. If the invoices issued during the relevant time specifically indicated that the amount as inclusive of service tax then the benefit of Section 67(2) is available to the appellant.

14. Regarding denial of cenvat credit of Rs.22,500/-, the appellant pleaded that such denial is only on the ground that the invoices were not in the appellant's name but were not in the name of branch/head office. We note that this cannot be

the reason for denial of credit. There is no allegation or finding to the effect that the input services were not received by the appellant or the said services were not covered under the scope of eligible input services in terms of the Cenvat Credit Rules, 2004. In such situation, we find that the denial of credit only on the ground that the address of branch office or head office was mentioned instead of appellant's address cannot be the ground for denial of otherwise eligible cenvat credit. On the last issue, the appellant did not categorically submit anything regarding catering service availed by them. No particulars or facts are submitted regarding the said service availed by them. In absence of any specific defence, we find no reasons to interfere with the denial ordered by the Original Authority.

15. In view of the above discussions and analysis, the appeals filed by the appellants are allowed with reference to the services rendered for which grants-in-aid were given by the Government and also with reference to cenvat credit of Rs.22,500/-. In respect of cum-tax-benefit, the verification should be done by the jurisdictional officer as per the above observations. Denial of credit on catering service is upheld. The appeals are disposed of in the above terms.

[Order pronounced on 19.04.2017]

(S.K. Mohanty)
Member (Judicial)

(B. Ravichandran)
Member (Technical)

Ckp.

