CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH – COURT NO. 1

Service Tax Appeal No. 743 of 2011

(Arising out of Order-in-Appeal No. 14(DKV)ST/JPR-1/2011 dated 12.1.2011 passed by the Commissioner, Central Excise, Jaipur)

M/s Malviya National Institute of Technology Appellant
Jawahar Lal Nehru Marg,
Jaipur (Rajasthan)

Versus

Commissioner, Service Tax, Jaipur Respondent
NCR Building, Statue Circle,
C-Scheme, Jaipur - 302005

Appearance

Shri Ankit Totuka, Advocate - for the appellant

Shri R.K. Manjhi, DR - for the respondent

Date of Hearing/Decision: 14.05.2019

CORAM:
HON'BLE MR. JUSTICE DILIP GUPTA, PRESIDENT
HON'BLE MR. BIJAY KUMAR, MEMBER (TECHNICAL)

Final Order No. 50746/2019

Justice Dilip Gupta:

This Appeal is directed against the order dated 12 January, 2011 passed by the Commissioner (Appeals), Central Excise, Jaipur-I by which the Appeal filed by the Appellant for quashing the order dated 26 April, 2010 passed by the Assistant Commissioner, Service Tax, Division, Jaipur confirming the demand of service tax and for recovery of interest and imposition of penalty, has been dismissed.

2. The Appellant is an engineering college that was established in the year 1963 by the name of Malviya Regional Engineering College, Jaipur. On 26 June, 2002, the said college was given the status of a National Institute of Technology and on 15 August, 2007 it was declared an Institute of National importance.

3. It is stated that on 16 July 2001, a new service by the name of "Scientific and Technical Consultancy" (hereinafter referred to as STC) it was inserted in Section 65(92) of the Finance Act, 1944 (hereinafter referred as the Act) and ever since then the Appellant has been paying service tax under this category of service. However, a Show Cause Notice dated 20 October, 2005 was issued to the Appellant mentioning therein that the Appellant had been providing "Scientific and Technical Consultancy" services to various clients and paying service tax under the category of "Scientific and Technical Consultancy" services with effect from 16 July 2001, but there was no difference between the scope of service provided in the category of "Consulting Engineer" (hereinafter referred to as CE) and the scope of services provided in the category of 'STC' services and, therefore, for the period 1 April, 2000 up to 15 July 2001, the Appellant should have paid service tax under the category of 'CE' but it did not pay. The relevant paragraphs 2 to 5 of the Show Cause Notice are reproduced below:

> "2. Whereas, the assessee are providing Scientific & Technical Consultancy Services to their various clients and paying service tax under the category of Scientific & Technical Consultancy Services w.e.f. 16.7.2001. Whereas it appears that there is no difference between the scope of services provided in the category of Consulting Engineering and the scope of services provided in the category of Scientific and Technical Consultancy Services. The service rendered, as Scientific & Technical Consultancy was also chargeable as Consulting Engineering Services under Section 66 read with Section 65(3) of the Act. Accordingly, the assessee was asked to provide the details of consultancy fees charged by them

> during the period from 1.04.2000 to 15.7.2001 which was provided by them vide their letter dated 20.09.2005 showing total collection as Rs. 29,77,282/- (Rs. 29,09,782/- (Consultancy fees) + Rs. 67,500 (NRS fees).
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> 3. And whereas as per Section 69 of the Finance Act, 1994 read with Rule 4 of Service Tax Rules, 1994 every person liable to pay the Service Tax is required to apply for registration to the concerned Superintendent within 30 days from the date on which Service Tax under Section 66 of the Finance Act, 1994 is levied.
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> 4. Whereas it has also been observed that the assessee has neither taken service tax Registration nor paid any service tax on the amount collected under the head of Consultancy fees so collected during the period of 1.4.2000 to 15.7.2001.
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> 5. As per provision of Section 67 of the Finance Act, 1994 gross amount charged by the service provider will be the taxable value for calculating service tax. Therefore, it appears that they were liable to pay service tax amounting to Rs. 1,48,864/- on Rs. 29,77,282/- charged for the services of consultancy engineering provided by them during 1.4.2000 to 15.7.2001."

4. The Appellant filed a detailed reply dated 14 November, 2005 to the aforesaid Show Cause Notice mentioning therein that the Appellant was not required to pay any service tax under the category of 'CE' for the reason that the essential ingredients of the service were not satisfied.

5. The reply submitted by the Appellant did not find favour of the adjudicating authority and by order dated 26 February, 2010 the demand of service tax was confirmed. The order also required the Appellant to pay interest and penalty was also imposed.

6. Feeling aggrieved, the Appellant filed an Appeal before the Commissioner (Appeals). The Appeal filed by the Appellant was dismissed by order dated 12 January, 2011. The Commissioner (Appeals) referred to the definition of 'CE' under Section 65(31) of the Act that was amended in 2006 and not to the definition of CE as it stood at the relevant time. The Commissioner (Appeals), therefore, observed that the service would a service provided by any professionally qualified engineer or anybody corporate or any

other firm who, either directly or indirectly rendered any advice, consultancy or technical assistance in any manner to a client in one or more disciplines of engineering. It is for this reason that the Commissioner (Appeals) observed that since the Appellant admitted that it was an engineering institute and has provided consultancy in the field of engineering for the period 1 April 2000 to 15 July, 2001, it was required to deposit the service tax. The Commissioner (Appeals), therefore, upheld the order passed by the Adjudicating Authority.

7. Learned Counsel for the Appellant has submitted that the Commissioner (Appeals) committed an error in referring to the definition of 'CE' as it stood after its amendment in 2006. It is his contention that the definition of 'CE' as it stood at the relevant time did not include "or anybody corporate" and, therefore, the services rendered by the Appellant would not fall under the category of 'CE'. It is also his submission that there is a marked difference between the two services namely 'CE' and 'STC' service as defined under section 65(31) and section 65(92) of the Act respectively.

8. Learned Authorised Representative of the Department has, however, supported the impugned order and has contended that the service rendered by the Appellant from 1 April 2000 to 15 July 2001 would fall under the category of 'CE' inasmuch as the Appellant had rendered advice, consultancy or technical assistance to a client in one or more disciplines of engineering.

9. We have considered the submissions advanced by the learned Counsel for the Appellant and learned Authorised Representative of the Department.

10. In order to appreciate the contentions, it would be appropriate at this stage to refer to the definition of 'CE' as it stood at the relevant time and is as follows:

> **Section 65(31**)- "Consulting Engineer" means any professionally qualified engineer or an engineering firm who either directly or indirectly, renders any advice, consultancy or technical assistance in any manner to a client in one or more disciplines of engineering."

Section 65(92) of the Act that was inserted on 16 July, 2001 defines "Scientific or Technical Consultancy" and is as follows:

> "Scientific or Technical Consultancy" 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 organisation, to a client, in one or more disciplines of science or technology."

11. It would also be relevant to reproduce the definition of "Consulting Engineer" that was amended in 2006 and is it as follows:

> **"Consulting Engineer"** means any professionally qualified engineer or any body corporate or any other firm who, either directly or indirectly, renders any advice, consultancy or technical assistance in any manner to any person in one or more disciplines of engineering."

12. As noticed above, the Appellant is a National Institute of Technology. It started paying service tax with effect from 16 July 2001 under the category of 'STC' service.

13. The dispute in the present Appeal is for a period prior to 16 July 2001, namely, from 1 April 2000 to 15 July, 2001. The Department was of the view that the nature of service rendered by the Appellant during this period will fall under the category of 'CE' services and, accordingly, the Show Cause Notice dated 20 October, 2005 was issued. The relevant paragraphs of the Show Cause Notice have been reproduced. Paragraph 2 mentions that it appeared to the Department that there was no difference between the scope of services provided in the category of 'CE' and the scope of services provided in the category of 'STC' and so the service provided under 'STC' would also be chargeable to service tax as 'CE' services under Section 65(31) of the Act.

14. This allegation made in the Show Cause Notice is apparently incorrect. The definition of 'CE' services as it stood prior to 16 July, 2001 was not amended when a new service namely, 'STC' was inserted on 16 July, 2001. It cannot, therefore, be alleged that 'STC' service had been carved out from 'CE' Services. In fact, the definition of 'CE' services continued to remain the same, till it was amended in 2006. Thus, the Show Cause Notice proceeded on an incorrect premise that even prior to 16 July, 2001, the nature of service provided in 'STC' services was the same as 'CE' Service.

15. This apart what appears to have prevailed upon the Commissioner (Appeals) order is the definition of 'CE' that was amended in 2006. The definition of 'CE' as it stood at the relevant time means any professionally qualified engineer or an engineering firm who either directly or indirectly renders any advice, consultancy or technical assistance in any manner to a client in one

or more disciplines of engineering. The Appellant is neither "professionally qualified engineer" or an "engineering firm". It cannot, therefore, be said that the Appellant had been providing 'CE' services. In fact, the nature of service provided by the Appellant would clearly fall under the category of 'STC' services and the Appellant had paid service tax when this service was introduced on 16 July 2001.

16. This being the position, it is not possible to sustain the impugned order dated 12 January, 2011. It is accordingly, set aside and the appeal is allowed.

(Dictated & pronounced in open Court)

(Bijay Kumar) Member (Technical)	(Justice Dilip Gupta) President

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