

**CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH AT HYDERABAD**

Division Bench
Court – I

Appeal No. ST/1879/2011

(Arising out of Order-in-Appeal No. 20/2011 (H-II) S. Tax dated 25.02.2011 passed by Commissioner of Customs, Central Excise & Service Tax (Appeals-I&III), Hyderabad)

Maithri Advisors and Planners Pvt. Ltd.,Appellant(s)

Vs.

**Commissioner of Central Excise, Customs
and Service Tax, Hyderabad-IIRespondent(s)**

Appearance

Shri D.S.V.S.N. Murthy, Manager for the Appellant(s).

Shri A.V.L.N. Chary, Superintendent (AR) for the Respondent(s).

Coram:

Hon'ble Mr. M.V. RAVINDRAN, MEMBER (JUDICIAL)

Hon'ble Mr. P. VENKATA SUBBA RAO, MEMBER (TECHNICAL)

Date of Hearing: 27/12/2018

Date of Decision: 27/12/2018

FINAL ORDER No. A/31640/2018

[Order per: P. Venkata Subba Rao]

This appeal has been filed by the appellant against Order-in-Appeal No. 20/2011 (H-II) S. Tax dated 25.02.2011.

2. The appellants herein are registered with the service tax department for providing Management Consultancy Services. They had provided some services to M/s GE Countrywide Consumer

Financial Services during the period April, 2004 to October, 2004 and received a consideration for the same. These amounts were not declared to the department nor was appropriate service tax paid on them. After a study of the agreement between the appellants and M/s GE Countrywide, it was felt by the Department that the services rendered by the appellant would fall under the category of Business Auxiliary service as per Section 65(19) of the Finance Act, 1994. Accordingly, show cause notice dated 18.09.2009 was issued to appellants demanding service tax along with interest and also proposing to impose penalties under Sections 76, 77 & 78 of the Finance Act, 1994. After following due process, the lower authority confirmed the demand along with interest and imposed penalties as proposed. Aggrieved, the appellant preferred an appeal before the First Appellate Authority who rejected the appeal and upheld the Order-in-Original. Hence this appeal. The representative of the appellant appeared before us and explained that they had rendered services to M/s GE Countrywide Consumer Financial Services Ltd., as per their agreement dated 01.05.2003, according to which they visit identified customers in their territory, notify them and assist GE in processing proposals for retail financing facilities of the identified customers. For each proposed account, they get paid by GE. Their job is confined to liaising with potential customers and helping them with the documents while the actual decision with respect of the financing is taken by GE. He would argue that they were not dealing with the customers but with only potential customers and hence they were not rendering a customer service. These services were exempted vide Notification No. 25/2004-ST dated 10.09.2004. The

benefit of this notification was extended to services rendered prior to the date of notification also by the Tribunal in the case of *Car World Autoline Vs. CCE, Cochin* [2008 (9) STR 246 (Tri.-Bang.)]. He therefore argued that they should also be given benefit of the exemption notification for the services rendered prior to the date of notification.

3. Learned Departmental Representative reiterates the findings of the lower authorities and asserts that the appellants were liable to service tax and demands were confirmed along with interest and penalties were imposed accordingly.

4. We have gone through the records of the case and considered the arguments on both sides. The demand is under the head of Business Auxiliary Services. The appellant herein has rendered service of documentation and other related work to promote the services rendered by their client namely M/s GE Countrywide which would fall under the definition of "Business Auxiliary services" under Section 65(19) of the Finance Act, 1994.

5. We have no hesitation in the factual matrix of the case to hold that the services rendered by them fall under the head of Business Auxiliary services during the relevant period and were liable to be service tax. There is nothing in the Notification No. 25/2004-ST dated 10.09.2004 to show that this was to have retrospective effect. It is a well settled principle of law that in statute every provision should be taken to have only perspective effect unless there is a

specific indication or otherwise. In view of the above, we find that the appellant is clearly liable to service tax under the head of Business Auxiliary Service for the services rendered by them during the relevant period. We have also considered the case law of *Car World Autoline* (supra) relied upon by the appellant and find in that case the benefit of exemption Notification No. 25/2004 dated 10.09.2004 was extended to the demand pertaining to an earlier period. However, there is no reason therein for retrospective application of this exemption notification. There is nothing in the notification to indicate that the notification was to have retrospective effect. We, therefore, find that the amount of demand and interest is liable to be upheld in the present case. Insofar as the penalties are concerned, we find that the appellant could have held a bonafide belief though wrongly that they were not covered under the service tax and hence in exercise of the demand confirmed under the Section 80 we set aside the penalty.

6. In conclusion, the appeal is disposed of by upholding the tax with interest and setting aside the penalties.

(Operative part of this order was pronounced in open court
on conclusion of hearing)

P. VENKATA SUBBA RAO
MEMBER (TECHNICAL)

M.V. RAVINDRAN
MEMBER (JUDICIAL)

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