

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE
TRIBUNAL
BANGALORE**

REGIONAL BENCH - COURT NO. 1

Service Tax Appeal No. 20055 of 2018

(Arising out of Order-in-Original No. 21/2017-18 dt.
25/10/2017 passed by Commissioner Of Central Tax,
Bangalore East)

**Commissioner of Central
Tax, GST Commissionerate,
Bangalore East,**
BMTC Building, Old Airport Road,
Domlur,
Bangalore 560071.

Appellant(s)

VERSUS

**MeritTrac Services Private
Limited,**
No.86, Sahana, Gandhi Bazaar,
Basavangudi,
Bangalore 560004.

Respondent(s)

APPEARANCE:

Mr. Dyamappa Airani, Dy. Commissioner(AR) for the appellant.
Mr. K.S. Ravishankar, Sr. Advocate; Mr. K.S. Naveen Kumar,
Advocate and Mr. N. Anand, Advocate for the respondent.

CORAM:

HON'BLE Dr. D.M. MISRA, MEMBER (JUDICIAL)

HON'BLE Mrs. R. BHAGYA DEVI, MEMBER (TECHNICAL)

Final Order No. 20769 / 2023

Date of Hearing: 06/04/2023

Date of Decision: 03/08/2023

Per : DR. D.M.MISRA

This is an appeal filed by the Revenue against the
Order-in-Original No.21/2017-18 passed by Commissioner of
Central Tax, Bengaluru.

2. Briefly stated the facts of the case are that the respondent herein are engaged in the business of evaluating skills, abilities and knowledge for specific skills in the organization through use of scientifically developed assessment tools; that as part of services to educational institutions, conducted examinations by themselves or assisted university/ college in conducting the same; they assisted universities like Manipal University and Sikkim Manipal University in conducting their examination wherein the respondent would identify, select, organize venue, provide university representatives and associate university representative, manage examination delivery, training of university representatives, identification of exam centers and conduct surprise audit, etc.; they have also conducted skills assessments for individuals either through university for non-recruitment but feedback purposes. The respondent claimed that the services rendered by them are educational and not commercial, accordingly availed benefit under Notification No.14/2004-ST dt. 10.09.2004 for the period April 2012 to June 2012 and for the period from 01.7.2012 to 31.3.2013 it falls under 'Auxiliary Education Service' and eligible to the benefit of Notification No. 25/2012 ST dr.20.6.2012. Alleging that the respondent rendered services under 'Management or Business consultant service' during the said period and the said services rendered by them being not related to 'education' for the period 01.4.2012 to 30.6.2012 and "Auxiliary Education Service" for the

period 01.7.2012 to 31.3.2013 , therefore, the benefit of exemption under the said notifications being not admissible, service tax to the tune of Rs.1,71,59,066/- and Rs.6,80,28,465/- was demanded for the respective period by issuing show Cause Notice on 22.05.2014 with interest and penalty. On adjudication, the said demand was dropped by the learned Commissioner. The Revenue is in appeal to the extent of demand of Rs. 1,71,59,066/- dropped for the period 01.4.2012 to 30.6.2012.

3. At the outset, the learned AR for the Revenue reiterating the grounds of appeal has submitted that on scrutiny of their ST-3 returns for the period April 2008 to September 2008, it was noticed that the respondent though rendered service under the taxable category of 'Management or Business Consultant service' as defined under Section 65(65) of Finance Act,1994, but wrongly claimed the benefit of exemption Notification No.14/2004 ST dated 10.9.2004 applicable to Business Auxiliary service. Consequently, the demand notices were issued to the appellant for recovery of the service tax not paid by claiming the said exemption notification. Periodical show-cause notices were issued to the respondent from time to time and the present demand relates to the period April 2012 to March 2013. He fairly submitted that for the earlier period, this Tribunal had decided the issue in favour of the respondent reported as 2019(24) GSTL 619 (Tri. Bang.).

4. He has submitted that the Commissioner in the impugned order failed to take note of the fact that the respondent was providing Management or Business Consultant Services for the period April 2012 to June 2012 as per the agreement dt. 08.07.2008 entered into with Sikkim Manipal University (SMU, for short); whereunder the respondent's basic responsibility was to assist SMU in conducting examinations, including providing the infrastructure and manpower to conduct the exams. The examination regulations are framed by the Directorate of the SMU and the head of the institution (SMU) will be the Chief Superintendent of the examination centre and the examination control room would be set up at Manipal which would be the nerve centre for all activities. Thus, they were not appointed to conduct the examination but to assist the conduct of the examination. Further, it is submitted that the activity of arranging the venue, infrastructure, travel etc. does not make the activity to be an independent conductor of the examination. In other words, their role was to provide technical assistance to the management; hence the services rendered by them fall within the scope of second part of the definition of 'Management or Business Consultant Service'. It is his contention that once the classification of the services falls under the taxable category of 'Management or Business Consultant Service', the benefit of Notification No.14/2004-St dt. 10.09.2004 is inapplicable as the same is restricted to Business Auxiliary Service (BAS) only. Also, since they do not provide the service on behalf of the University, hence

their activities cannot fall under the definition of "Business Auxiliary Service". Besides, the service rendered by the respondent is not relating to education, hence, they are not eligible to the benefit of said Notification 14/2004ST dt.10.9.2004. In support, the learned AR for the Revenue referred to the judgment of the Tribunal in the case of ***Piem Hotels Ltd. Vs. CCE, Nasik*** [2016(43) STR 211 (Tri. Mum.) and ***Karnataka Udyog Mitra Vs. Commissioner of S.T., Bangalore*** [2015 (38) S.T.R 839 (Tri-Bang)].

5. The learned Senior Advocate for the respondent has submitted that the services rendered by the respondent are described in the agreement dt. 08.07.2008. He has submitted that analyzing the scope of the work, it is clear that the respondent is required to identify, select and organize venues for examination as per the norms of the SMU. They were required to provide SMU representative for each venue and the university representative will be trained thoroughly on the process. Also, they will appoint a five member team to manage the examination delivery; also the team members of the respondent to man the control room set up by SMU. He has submitted that a plain reading of the scope of the definition of 'Management or Business Consultant' Service during the period in question, it is very clear that to come within the scope of the said definition, there should be participation by the person directly or indirectly in connection with the management of any organization or business in any manner.

However, in the present case, the respondent's role is limited to the extent of undertaking examinations for the universities and identifying the talent through exams for admission into the said universities. Therefore, the services rendered by the respondent would not come within the scope of 'Management or Business Consultant Service as the services rendered by respondent more or less executory in nature . Further, he has submitted that the service of conducting examination by the Respondent is a part of educational activity imparted by the said Universities and it is incorrect to say that conducting of examination commencing from the stage selection of the talent is not part of the education service. He has submitted that this Tribunal in the respondent's own case for the period December 2007 to March 2012 following the decision of the Tribunal in the case of **Rolls Royce Industrial Power (I) Ltd. Vs. CCE, Visakhapatnam** [2006(3) STR 292 (Tri. Del.)], **Basti Sugar Mills Co. Ltd. Vs. CCE, Allahabad** [2007(7) STR 431 (Tri. Del.)] and **Nirulas Corner House Pvt. Ltd. Vs. CST, New Delhi** [2009(14) STR 131 (Tri. Del.)] held that the service rendered by the appellant cannot come within the scope of Business or Management Consultant Service. Further, the Tribunal has held that benefit of Notification No.14/2004-ST dt. 10.09.2004 is also admissible to the respondent. Learned counsel also referred to the judgment of the Chennai Bench in the case of **Vedanta Ltd. Vs. CCE, Tirunelveli** [2019(28) GSTL 258 (Tri. Chennai)] and **BSR & Co. Vs. CST, Gurgaon** [2013(30) STR 242 (Tri. Del.)] and submitted that services rendered by the

respondent cannot come under the scope of Management or Business Consultant Service but falls under the scope of Business Auxiliary Service and accordingly benefit of notification has been rightly extended by the learned adjudicating authority.

6. Heard both sides and perused the records. The short question involved in the present case is: whether the services rendered by the respondent to Manipal University(MU) and Sikkim Manipal University(SMU) as per agreement dated 08.7.2008 in conducting examinations for selection of candidates for admission to various courses and other evaluating examinations fall under the scope of "Management or Business consultant service" and the respondent is not eligible to the benefit of exemption Notification No.14/2004 ST dt.10.9.2004.

7. Section 65(65) of Finance Act,1994 defines "Management or Business consultant service", and at the relevant time it read as:

"(65) management or business consultant" means any person who is engaged in providing any service, either directly or indirectly, in connection with the management of any organisation or business in any manner and includes any person who renders any advice, consultancy or technical assistance, in relation to financial management, human resources management, marketing management, production management, logistics management, procurement and management of information technology resources or other similar areas of management;

The Revenue's contention is that the scope of work described at Annexure -1 to the agreement dated 08th July 2008 satisfies the above definition.

8. Analyzing the issue, learned Commissioner has recorded the finding as follows:-

"9.10.1. For the initial period of the SCN i.e. 1/4/2012 to 30/6/2012, I find that the SCN has demanded duty under the category of Management or Business Consultant Service.

9.10.2. During the period in question, as per section 65(105)(r) of the Finance Act 1994 in respect of management or business consultant services, "Taxable Service" means any service provided or to be provided to any person, by a management or business consultant in connection with the management of any organization or business in any manner;

As per Section 65(65) of the Finance Act, 1994, "Management or Business Consultant" means any person who is engaged in providing any service, either directly or indirectly, in connection with the management of any organisation or business in any manner and includes any person who renders any advice, consultancy or technical assistance, in relation to financial management, human resources management, marketing management, production management, logistics management, procurement and management of information technology resources or other similar areas of management;

9.11. On perusal of the Show Cause Notice, I find that as per para 2(iii) of the Show Cause Notice, the scope of the work of the agreement dated 08.07.2008 entered into between the Assessee and Sikkim Manipal University is as follows.

i. MeritTrac will identify, select and organise venue for examination as per the norms of SMU.

- ii. MeritTrac will provide SMU with UR and AUR.
- iii. MeritTrac will appoint a five member team to manage the examination delivery .
- iv. MeritTrac team members will also be deployed to man the control room set up by SMU.
- v. The responsibility of MeritTrac is to assist SMU in conduct of exams including providing of the infrastructure and manpower to conduct the exams .
- vi. The venues, URs and AURs will be under the control of MeritTrac, so all activities their selection, training and deployment will be the responsibility of MeritTrac. All money for centre, UR and AUR will be disbursed by MeritTrac.

9.12. In this connection, the assesseees have submitted that:

- i) They are involved in the actual conduct of exams, supervision /administration of tests, evaluation of scores etc on behalf of the University.
- (ii) They **do not provide** any advice, consultancy or technical assistance in relation to the management function of the University.
- (iii) The service provided by them is executory in nature and not advisory in nature and therefore they cannot be said to be providing "Management or Business Consultancy services" which are purely advisory in nature.

9.13. They have relied on the following decisions in their support:

1. Decision of CESTAT, NEW DELHI BENCH in the case of **Basti Sugar Mills Co. Ltd. u. Commissioner of Central Excise, Allahabad** [2007 10 STT 107 (NEW DELHI - CESTAT) wherein the Tribunal held as follows:-

"Management Consultant' means any person who is engaged in providing any service, either directly or indirectly, in connection with the management of any organization in any manner and includes

any person who renders any advice, consultancy, devising, development, modification, rectification or upgradation of any working system of any organization."

The above definition makes it clear that what is envisaged from a consultant is advisory service and not the actual performance of the management function.

2. *Decision of CESTAT Delhi in the case of Rolls Royce Industries Power (I) Ltd. Vs. CCE [2007 6 STT 506 (New Delhi – CESTAT) / 2006 3 STR 292 (New Delhi – CESTAT) wherein the Tribunal ruled as follows:-*

The issue raised is the true meaning and scope of operation and maintenance agreement dated 14-3-95. The appellant had taken over the plant and was operating & maintaining it in terms of the agreement. A perusal of the agreement makes it clear that it is a contract between owner and an operator. The terms of the contract vest complete freedom and responsibility on the appellant, without any interference by the owner. The owner's right is restricted to entry and access, to be satisfied that the operation is carried out according to standards. He also receives reports about the relevant aspects of operation, status and output. The payment for operation and maintenance are determined under the various clauses of the contract. In addition to the lump sum payment, it also provides for bonus and penalty. The terms of the contract do not envisage or involve providing any consulting or engineering help to the owner. The operator is fully autonomous and responsible for the performance of operation and maintenance. Whatever engineering issues are involved, it is for the operator to find solutions for, and attend to in the course of operation and maintenance. He is not required to render any advice or to take any orders

from the owner. He cannot pass on the responsibility for operating the plant in any manner to the owner. Thus, there are no two parties, one giving advise and the other accepting it. Service tax is attracted only in a case involving rendering of service, in this case, engineering consultancy. That situation does not take place in the present case. Therefore, we are of the opinion that the duty demand raised is not sustainable.

3. *Decision of CESTAT, New Delhi Bench in the case of Nirulas Corner House (P) Ltd. Vs. CST, New Delhi [2009 (19) STT 373 (New Delhi – CESTAT)] wherein the Tribunal found as follows:-*

The definition of management consultant makes it clear that what is envisaged from a consultant is advisory service and not the actual performance of the management function. Any other meaning to the term management consultant would render the entries relating to many other services which are rendered in connection with the management of any organization such as "manpower recruitment or supply agency" service, "business auxiliary" service as redundant. In the common parlance also, the role of a consultant is to render advice, consultancy and technical assistance in the matters on which he has the expertise. However, the decision on acceptance or otherwise of such advice is left to the management and the consultant does not have right to impose his advice. In such a situation, it ceases to be an advice and becomes an order or direction.

4. *Decision of CESTAT, Mumbai Bench in the case of Suzlon Windfarm Services Ltd. Vs. CCE, Pune-II [2014 (46) taxmann.com 308 (Mumbai – CESTAT)] wherein it was held that :*

The client of the appellant herein, M/s. Suzlon Energy Ltd., are manufacturers of wind

operated windmill generators and systems. In the sales agreements entered into by them with their customers, there is a provision for operation and maintenance and security of the windmills by M/s. Suzlon Energy Ltd. for a period of 5 years free of cost and, thereafter on payment of charges. To fulfil this contractual obligation as per the agreement, M/s. Suzlon Energy Ltd. entered into an agreement with the appellant to actually undertake the operation, maintenance and security of the windmill sold by M/s. Suzlon Energy Ltd. to their customers and the appellant actually undertook operation and maintenance and security of the windmill system. What the appellant has performed is operation and maintenance of windmills and not rendering any advice, consultancy or technical assistance in any field of engineering, which is the criterion for classifying the service under the category of 'Consulting Engineer's Service'. Such executory services does not come under the purview of 'Consulting Engineer's Service'. In the case of Rolls Royce Industrial Power (I) Ltd., cited supra, it was held that operation and maintaining of power plants do not come within the category of 'Consulting Engineer's Service' and the ratio of the said decision is relevant to the facts before us and the ratio of the said decision squarely applies.

5. *Decision of CESTAT, Mumbai Bench in the case of CCE, Nashik Vs. Sahney Kirkwood (P) Ltd. [2015 56 taxmann.com 127 (Mumbai – CESTAT)] wherein it was held as follows:-*

There is a difference between "manager" and "managing consultant". While manager actually manages the things, a consultant provides consultancy/advice as to how to manage. Both are not the same. Therefore, we find that the reasoning adopted by the lower appellate authority in the impugned order for coming to the conclusion that recipient did not render any management consultancy services cannot be faulted.

9.14. *In the instant case, in view of the clauses of the agreement as quoted in the SCN itself, on facts, I find that the assessee is providing only executory services of organizing exams on behalf of the University and there is no evidence to the effect that they are providing any advice / consultancy with respect to the management of the universities.*

9.15. *Once the above issue on facts is clear, the question of law is no longer res integra in view of the plethora of decisions of various benches of the Tribunal on the issue right from 2007 to 2016. I therefore find that the assessee in this case cannot be said to be providing Management or Consultancy Service and therefore the SCN is not sustainable for the period from 1/4/2012 to 30/6/2012 also.*

9.16. *I also find that the assessee have made an alternative plea to the effect that they are eligible for benefit of exemption under Notification No.14/2004-St dt. 20/09/2003. The said notification reads as follows:-*

In exercise of the powers conferred by sub-section (1) of section 93 of the Finance Act, 1994 (32 of 1994), the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts taxable service provided to a client by a commercial concern in relation to the business auxiliary service, insofar as it relates to,

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(a) procurement of goods or services, which are inputs for the client;

(b) production of goods on behalf of the client;

(c) provision of service on behalf of the client; or

(d) a service incidental or auxiliary to any activity specified in (a) to (c) above. from the whole of the service tax leviable thereon under section 66 of the said Finance Act :

Provided that nothing in this notification shall apply to, -

- (i) a factory registered under or governed by the Factories Act, 1948 (63 of 1948);*
- (ii) a company established by or under the Companies Act, 1956 (1 of 1956);*
- (iii) a partnership firm, whether registered or not registered;*
- (iv) a society registered under the Societies Registration Act, 1860 (21 of 1860) or under any law corresponding to that Act in force in any part of India;*
- (v) a co-operative society established by or under any law;*
- (vi) a corporation established by or under any law; or*
- (vii) a body corporate established by or under any law,*
unless such factory, company, partnership firm, society, co-operative society, corporation or body corporate, as the case may be, provides any business auxiliary service in respect of any activity specified in (a) to (d) above in relation to agriculture, printing, textile processing or education.

9.17. On a cogent reading of the above notification, it is seen that any service wherein a body corporate / company provides service on behalf of its clients and wherein such service is in relation to education, the same is exempt from service tax.

9.18. In the instant case, the assessee which is a company / body corporate is providing service to students on behalf of its clients (the universities) and the service is that of administering examinations, which is certainly a service in relation to education. Therefore, I find that the assessee is eligible for benefit of exemption under the said notification and the show cause notice is not sustainable for the above reasons also."

9. We find that the Tribunal in the Respondent's own case for the earlier period i.e. from December 2007 to March 2012 interpreting the same agreements referring to the same

judgements held that the allegation of the department that the services rendered by the respondent fall under the category of 'Management or Business consultant' service cannot be sustained as the services rendered by the respondent to the Universities do not fit into the definition of Management or Business consultant service. We do not find any reason not to follow the said precedent and also no sound argument advanced by the Revenue to set aside the analysis of facts and conclusion recorded by the Ld. Adjudicating authority in applying the principles of law laid down by the Tribunal in the series of case laws referred by him in the impugned Order.

10. The Department's argument is that the respondent has rendered assistance in carrying out the examinations under the said agreement but in fact the exams are conducted by the university itself; hence the services fall within the scope of 'Management or Business Consultant Services'. In our opinion the stand of the department is devoid of merit. A careful reading of the scope of the service mentioned in the said agreement, referred to and analysed by the learned Commissioner in the impugned Order, clearly indicates that the respondents being experts in the field, approached by the Universities to carry out the exams for the university, to identify the talented candidates for enrolment and other purposes to various courses and the methodology/procedure for the execution of the said objective narrated in the form of agreement. The respondent's role is to

execute the conduct of exams by providing necessary manpower, expertise, infrastructure etc. as stipulated in the said agreement. The said service thus cannot be construed as rendering any management or business consultancy/advice to the universities by the Appellant without its involvement in the execution of the conduct of the examination. Further, we find that the learned Commissioner has rightly extended the benefit of Notification No.14/2004-ST dt. 10.09.2004 as the services rendered by the respondent relates to educational services. The judgments cited by the learned AR in the case of **Piem Hotels Ltd.** and **Karnataka Udyog Mitra's** case are not relevant and applicable to the facts of the case in hand. In the former case, the question was whether the service provided by M/s IHCL to M/s Piem Hotels was in the nature of "Management or Business Consultancy service or Business Auxiliary service so as to determine the admissibility of CENVAT credit of the service tax paid by the Appellant M/s Piem Hotels under Rule 6(5) of CCR,2004. The Tribunal observed that nature of service provided by IHCL is of the kind of advice, consultancy and assistance which are directly in connection with management of hotels. It is held that IHCL is not managing or conducting the hotel business of Piem on their behalf, but are only providing the management consultancy and advice by posting only key senior personnel to assist Piem to conduct their hotel business with their own infrastructure and manpower. In Karnataka Udyog Mitra's case, the issue was whether the processing fees paid for services rendered by the appellant therein relating to provision of

an environment, whereby it helps investors handling, investment processes and procedures with ease, identify, inform, promote, organize, facilitate, accelerate the processes of investment providing information to investors and the entrepreneurs on the opportunities available in Karnataka for industry, trade and commerce etc., which would help the entrepreneurs to set up industry in the state of Karnataka, be changeable to service tax as Management or Business consultancy service. The Tribunal held that the Appellant provided Management or Business consultancy to the entrepreneurs/investors and accordingly leviable to service tax. Such is not the scenario in the present case, hence the observation of the said case is also not applicable to the present case.

11. In view of the above, the impugned order is upheld and the appeal filed by the Revenue being devoid of merit, is accordingly rejected.

(Pronounced in open court on 03/08/2023.)

(D.M. MISRA)
MEMBER (JUDICIAL)

(R. BHAGYA DEVI)
MEMBER (TECHNICAL)

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