

2012 (25) S.T.R. 245 (Tri. - Del.)

IN THE CESTAT, PRINCIPAL BENCH, NEW DELHI

Ms. Archana Wadhwa, Member (J) and Shri Rakesh Kumar, Member (T)

**INDIAN INSTITUTE OF FOREST MANAGEMENT Versus COMM. OF C. EX.,
BHOPAL**

Final Order Nos. ST/571-572/2011(PB), dated 21-10-2011 in Appeal Nos. ST/695/2008 and ST/1062/2010

REPRESENTED BY : Shri M.K. Sharma, Chartered Accountant, for the Appellant.

Shri Sheo Narayan Singh, Jt. CDR, for the Respondent.

[Order per : Rakesh Kumar, Member (T)]. - The appellant is an autonomous Institute under the Ministry of Environment and Forest, Government of India and it is a premier institute for education research, training and consultancy in the area of Forest Management. The appellant runs classes for various degree and diploma courses and besides this, also organize short term courses in various subjects relating to Forest Management, Social Forestry, Water shed management, Environmental Management System etc. for which no degree or diploma is given. These short term classes are organized mainly out of grants received by the appellant from the Government for this purpose, though some amount is charged from the participant. The department was of the view that the activity of organizing short term courses on various topics relating to forestry management, environment, etc. is covered by the definition of "management consultancy" and accordingly the same would attract service tax. According to the department, during the period from 1999-2002 to 2002-04, the appellant had provided taxable service of "management consultancy" for various organizations for which they have received an amount of Rs. 3,78,01,521/- on which the service tax chargeable would be Rs. 2379985/- which has not been paid. It is on this basis the show cause notice was issued to the appellant for :-

- (a) Demand of service tax amounting to Rs. 2379985/- alongwith interest; and
- (b) Imposition of penalty on the appellant under Section 76, 77 and 78 of the Finance Act, 1994.

1.1. The show cause notice was adjudicated by the Additional Commissioner vide order-in-original dated 3-1-2008 by which -

- (a) the demand of service tax amounting to Rs. 821137/- was confirmed alongwith interest under Section 73 read with Section 75 of the Finance Act, 1994 and the service tax demand for the remaining amount of Rs. 1558844/- was dropped;
- (b) Penalty of Rs. 200/- per day under Section 76 *ibid* was imposed for failure to pay the service tax by due date from the date on which the tax was due till the date of payment of service tax; and
- (c) Penalty of Rs. 1000/- under Section 77 and Rs. 8,21,137/- under Section 78 of the Finance Act, 1994.

1.2 On appeal to Commissioner (Appeals) against this order of the Additional Commissioner, the Commissioner (Appeals) vide order-in-appeal dated 18-7-2008 upheld the Additional Commissioner's order and dismissed the appeal.

1.3 The order-in-original dated 3-1-2008 of the Additional Commissioner

was reviewed by the Commissioner under Section 84 of the Finance Act, 1994 and vide order in review dated 24-12-2009 the Commissioner -

- (a) Confirmed the demand of Rs. 1767129/- as additional service tax liability under Section 73(1) of the Finance Act, 1994 alongwith interest;
- (b) Imposed penalty of Rs. 200/- per day under Section 76 in respect of failure to pay the tax by due date; and
- (c) Imposed penalty of Rs. 1767129/- under Section 78 *ibid*.

1.4 While Appeal No. ST/695/2008 has been filed by the appellant against the order dated 18-7-2008 of the Commissioner of Central Excise (Appeals), the second appeal No. ST/106/2010 has been filed by the appellant against the Commissioner's order-in-revision dated 24-12-2009.

2. Heard both the sides.

2.1 Shri M.K. Sharma, Chartered Accountant, Id. Counsel for the appellant, pleaded that the appellant's activity of organizing short term courses on various subjects relating to Forestry Management, Environment, Water Resources Management, etc. is not covered by the definition of 'Management Consultancy Services', as given under Section 65(65) of the Finance Act, 1994, that the appellant does not conceptualise, devise, develop, modify, rectify or upgrade any working system of any organization, that the short term courses organized are meant for Senior Officers of Indian Forest Service, National Afforestation and Ecodevelopment Board, Department of Science & Technology, Ministry of Tribal Affairs, etc, that these courses have nothing to do with the Management Consultancy Service, that the Commissioner has failed to observe that the appellant is neither engaged in management of any organization in any manner nor in rendering any consultancy, advice or technical assistance to any organization in connection with management of that organization, that since the activity of the appellant is not covered by the definition of "Management Consultancy Service", no service tax is chargeable and as such, the impugned orders are not correct.

2.2 Shri Sheo Narayan Singh, Id. Jt. CDR defended the impugned orders by reiterating the findings of the Commissioner (Appeals) and emphasised that the appellant's activity is covered by the definition of Management Consultancy Services as given in Section 65(65) read with Section 65(105)(r) of the Finance Act, 1994. He, therefore, pleaded that there is no infirmity in the impugned orders.

3. We have carefully considered the submissions from both the sides and perused the records. The activity on which the service tax demand has been raised is organizing of short term courses for the persons of various organization on various topics relating to Forestry Management, Environment Management System Social Forestry, Water Resources Management, etc. According to the Department, this activity of the appellant is covered by the definition of Management Consultancy Service which attracts service tax.

4. Section 65(65) defines the taxable service in respect of a Management Consultant as any service provided or to be provided to a client by a Management Consultant in connection with the management of any organization in any manner.

4.1 During the period of dispute, the term "Management Consultant" was defined in Section 65(65) of the Finance Act, 1994 as under :-

“The 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 a person, who renders any advice, consultancy or technical assistance leading to conceptualising, devising, developing, modifying, rectifying or upgrading of any working system of any organization.”

4.2 Thus, for treating a person as Management Consultant, the following conditions must be satisfied :-

- (1) The person must be engaged in providing either directly or indirectly a service in connection with the management of any organization in any manner;
- (2) The service rendered by the person must relate to rendering any advice, consultancy or technical assistance relating to conceptualising, devising, developing, modifying, rectifying or upgrading of any working system of some organization.

5. In this case, the focus of the appellant's activity in organizing short term courses on the subject relating to the Forestry, Water Resources Management, Environment, for the officers of Indian Forest Service and other organizations i.e. improving the skills and knowledge level of the persons of various organizations attending the courses and as such, there is no activity of the appellant, which can be called rendering advice, directly or indirectly, in connection with management of any organization. Just imparting training in certain areas to the Officers of certain organizations does not amount to rendering the service of Management Consultancy either directly or indirectly to that organization. We, therefore, hold that the activity of organizing of the short term courses, in this case, is not covered by the definition of 'Management Consultancy Service' and, hence, the impugned orders upholding the service tax demand and penalty are not sustainable. The same are set aside. The appeals are allowed.

(Pronounced in the open court on 21-10-2011)
