

***SERVICE TAX PLANNING – LIMITS OF MANAGEMENT CONSULTANCY SERVICES.***

***Meaning***

Section 65(105)(r) of Finance Act, 1994 defines taxable service as any service provided or to be provided to any person by a management or business consultant<sup>1</sup> in connection with the management of any organization or business, in any manner.

***INTRODUCTION - Limits of management consultancy services***

Scope of management consultancy is quite wide and it was nearly impossible to escape the liability of service tax. However after the analysis of certain case laws as analyzed below, you will change your mind.

In corporate scenario it is generally seen that one corporate house controls the entire operations and management of its other group companies for a certain payment. Will this amount charged be covered within the scope of management consultancy services ?

***ANALYSIS – Management consultancy services vis-à-vis Manger***

In case of *Basti Sugar Mills Company Limited*<sup>2</sup> appellant was engaged in the manufacture of sugar in its sugar mill and under an agreement with Indo Gulf Industries Limited, it took over the management Indo Gulf Industries Limited sugar mill in

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<sup>1</sup> Finance Act 1994, s 65(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.

<sup>2</sup> 2007 (7) STR 431

consideration of certain payment. Service Tax department treated the above agreement as a Management Consultancy agreement and demanded service tax on this payment. CESTAT observed that under the said agreement appellant has been "entrusted the operation of the factory" and also the agreement is not for any advice or consultancy. It also observed that definition of management consultancy services covers advisory service from a consultant and not the actual performance of the management function. As in this case appellant was in-charge of the operation of the factory and thus was performing the management function CESTAT ruled that no service tax would be applicable for rendering these management functions.

Similarly in case of *Rolls Royce Industrial Power (I) Limited and Anr.*<sup>3</sup> CESTAT observed that appellant had taken over the plant and was operating & maintaining it as per the terms of the contract. Contract gives complete freedom and responsibility to appellant, without any interference by the owner. Rights of the owner were restricted to entry and access, so that he could be satisfied that the operation is carried out according to standards. Operator is fully autonomous and responsible for the performance of operation and maintenance and he cannot, pass on the responsibility for operating the plant in any manner to the owner. Operator is not required to render any advice or to take any orders from the owner. Therefore CESTAT held that there were no two parties (one giving advice and the other accepting it) and ruled that no service tax could be levied on the payment received by operator for carrying on the operations in the factory.

These judgments cited above were recently relied by CESTAT in case of *M/s Nirulas Corner House Private Limited*<sup>4</sup>.

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<sup>3</sup> 2006 (3) STR 292

<sup>4</sup> 2009 TIOL 130 (CESTAT- Del)

***CONCLUSION - No service tax on Management functions***

From case laws cited *supra* we conclude that no service tax would be applicable wherein taxpayer took over the management of a factory under a contract and role of the appointed manager/operator (tax payer) is to perform the actual management function and not to render any kind of advice or consultancy.

*[Comment; Several companies are paying service tax under the category of management consultancy services even though they are not require, in view of the above judgments.*

*There is immense scope of tax saving in this respect, however while taking this benefit it is to be insured that management agreement between the parties is drafted well and draftsman shall not leave any scope for providing management consultancy.*

*I have similar views with respect to service category 'consulting engineer'.]*