

(1)

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

Division Bench

Court – I

Service Tax Appeal No. 361 of 2008

(Arising out of OIA No. 06/2008-Adjn-ST dt.20.03.2008 passed by Commissioner of Central Excise, Customs & Service Tax, Hyderabad)

Andhra Pradesh Technology Services Ltd

4th Floor, B-Block, BRKR Bhavan,
Tank Bund Road, Hyderabad – 500 003

.....Appellant

VERSUS

**Commissioner of Central Tax
Hyderabad - II**

LB Stadium Road, Basheerbagh,
Hyderabad – 500 004

.....Respondent

with

Service Tax Appeal No. 472 of 2008

(Arising out of OIA No. 06/2008-ST dt.18.08.2008 passed by Commissioner of Central Excise, Customs & Service Tax, Hyderabad)

**Commissioner of Central Tax
Hyderabad - II**

LB Stadium Road, Basheerbagh,
Hyderabad – 500 004

.....Appellant

VERSUS

Andhra Pradesh Technology Services Ltd

4th Floor, B-Block, BRKR Bhavan,
Tank Bund Road, Hyderabad – 500 003

.....Respondent

with

Service Tax Appeal No. 530 of 2009

(Arising out of OIO No. 16/2009-ST dt.27.02.2009 passed by Commissioner of Central Excise, Customs & Service Tax, Hyderabad)

Andhra Pradesh Technology Services Ltd

4th Floor, B-Block, BRKR Bhavan,
Tank Bund Road, Hyderabad – 500 003

.....Appellant

VERSUS

**Commissioner of Central Tax
Hyderabad - II**

LB Stadium Road, Basheerbagh,
Hyderabad – 500 004

.....Respondent

(2)

with

Service Tax Appeal No. 1776 of 2010

(Arising out of OIA No. 22/2010-ST dt.28.04.2010 passed by Commissioner of Central Excise, Customs & Service Tax, Hyderabad)

Andhra Pradesh Technology Services Ltd

4th Floor, B-Block, BRKR Bhavan,
Tank Bund Road, Hyderabad – 500 003

.....Appellant

VERSUS

**Commissioner of Central Tax
Hyderabad - II**

LB Stadium Road, Basheerbagh,
Hyderabad – 500 004

.....Respondent

and

Service Tax Appeal No. 3116 of 2012

(Arising out of OIA No. 112/2012-ST dt.30.07.2012 passed by Commissioner of Central Excise, Customs & Service Tax, Hyderabad)

Andhra Pradesh Technology Services Ltd

4th Floor, B-Block, BRKR Bhavan,
Tank Bund Road, Hyderabad – 500 003

.....Appellant

VERSUS

**Commissioner of Central Tax
Hyderabad - II**

LB Stadium Road, Basheerbagh,
Hyderabad – 500 004

.....Respondent

Appearance

Shri B. Venugopal & P. Sai Makrand, Advocates for the Assessee.

Shri P. Venkata Prasad, CA for the Assessee in ST/3116/2012.

Shri A. Rangadham, AR for the Revenue.

Coram:

HON'BLE MR. ANIL CHOUDHARY, MEMBER (JUDICIAL)

HON'BLE MR. A.K. JYOTISHI, MEMBER (TECHNICAL)

FINAL ORDER No. A/30388-30392/2023

Date of Hearing: 06.07.2023

Date of Decision: 21.11.2023

[Order per: ANIL CHOUDHARY]

Heard the parties.

2. The Appellant is a government company of the State government formed for the purpose of acting as the nodal agency for the government departments of the State of Andhra Pradesh, in the matters relating to implementation and usage of information technology, under the administrative control of

(3)

'Information technology and communication department' of the state government. Vide government order No. 71 dated 20/12/1985, it was specified – the government have taken the decision to introduce the use of computers in the government departments for improving the quality and timeliness of Data required to enable quicker decision-making and thereby improve the overall efficiency of the department. At present some of the departments owning computers are finding it difficult to obtain services of the competent computer professionals for maintenance of the systems. In view of the growing demand for computers, hereby accord sanction for constitution of an organisation under the name and style of 'Andhra Pradesh technology services Ltd' with the following objectives: –

to provide consultancy to government departments and corporations in the purchase of modern office equipment including computer hardware, to provide consultancy to upgrade the computer and electronic systems of departments/corporations already possessing them, maintenance of hardware on contractual basis; development of software appropriate to the needs of user agencies and generally dealing in purchase/sale/exchange of software; provide services to operate the systems; provide consultancy to user agencies for recruitment of professionals; create computer awareness and provide detailed training to user agencies at various levels; aid development, purchase and maintenance of Telugu script typewriters, work processors and other mechanical and electronic devices; facilitate the use of remotely self-starter and communications by providing training and consultancy facilities; undertake research and development in software; adoption of innovations in Repro graphic technology and assist in acquisition and maintenance of equipment and training of personnel required; assist in acquisition, maintenance and use of any other technological aids to administration. Further sanction was also accorded for an expenditure of ₹ 8,000/- towards registration to be debited in the account head – 296: secretarial and economic services.

3. That pursuant to enquiries about activity of Appellant, and details furnished, the Department had issued Show Cause Notice(s) after lengthy correspondence between APTS and the Department. It can be seen from the record that the MD of APTS had also written to the Government of Andhra Pradesh, seeking clarity regarding the payment of service tax. The primary contention of the Show Cause Notices are that APTS had neither taken registration nor paid services tax on amounts received for providing various taxable services such as (i) Mandap Keeper Services, (ii) Manpower supply

services and (iii) Commercial Coaching and (iv) Business Auxiliary services. The Show Cause Notice also invoked the extended period in terms of proviso to Section 73 (1) of the Finance Act, as it appeared that APTS had wilfully misstated facts with an intention to evade payment of Service tax.

6. Learned Counsel submits the details of the demands for the various periods as follows:

SCN Nos. 14/2007 dated. 03.2007 (2001-02 to 2005-06)-ST/361/2008

As per SCN			As per OIO		
Category of Service	Period	ST demanded (Rs.)	Category of Service	Period	ST confirmed (Rs.)
Mandap Keeper	2001-02 to 2005-06	2,74,853	Mandap Keeper	Up to 09.09.2004	2,19,108
Commercial coaching or training		NIL	Commercial coaching or training	From 10.09.2004 to 31.05.2006	55,745 (originally proposed under Mandap Keeper Service)
Business Auxiliary Service	2003-04 to 2005-06	1,18,82,625	Business Auxiliary Service	From 09.07.2004 to 31.03.2006	86,38,207 (after allowing exemption under Not. 13/2003)
Manpower Supply Service	2005-06	11,50,825	Manpower Supply Service	2005-06	11,50,825
Total		1,33,08,303			1,00,63,885

SCN No. 63/2007 Dt. 03.10.2007 (2006-07)

As per SCN			As per OIO		
Category of Service	Period	ST Demanded (Rs.)	Category of Service	Period	ST confirmed (Rs.)
Commercial coaching or training	2006-07	7,895	Commercial coaching or training	2006-07	7,895
Business Auxiliary Service	2006-07	44,76,167	Business Auxiliary Service	2006-07	25,68,106 (After considering the amount already paid)
Manpower Supply Service	2006-07	4,39,128	Manpower Supply Service	2006-07	4,00,579 (after considering the ST already paid on Service charges)
Total		49,23,190			29,76,580

SCN No. 78/2008 dated 16.10.2008 (2007-08)-ST/530/2009

As per SCN			As per OIO		
Category of Service	Period	ST demanded (Rs.)	Category of Service	Period	ST confirmed (Rs.)
Commercial coaching or training	2007-08	1,711	Commercial coaching or training	2007-08	1,711
Business Auxiliary Service	2007-08	39,81,679	Business Auxiliary Service	2007-08	39,81,679
Manpower Supply Service	2007-08	10,35,764	Manpower Supply Service	2007-08	10,35,764
Total		50,19,154			50,19,154 (Rs.15,24,425 paid and appropriated)

SCN No.121/2009 dated 08.10.2009 (2008-09)-ST/1776/2010

As per SCN			As per OIO		
Category of Service	Period	ST demanded (Rs.)	Category of Service	Period	ST confirmed (Rs.)
Business Auxiliary Service	2008-09	51,56,112	Business Auxiliary Service	2008-09	51,56,112
Manpower Supply Service	2008-09	13,20,431	Manpower Supply Service	2008-09	13,20,431
Total		64,76,544			64,76,544 (Rs.54,51,646 already paid is appropriated)

SCN dated 20.10.2010 (served on 13.01.2011) (2009-10)-ST/3116/2012

As per SCN			As per OIO		
Category of Service	Period	ST demanded (Rs.)	Category of Service	Period	ST confirmed (Rs.)
Business Auxiliary Service		5,29,550	Business Auxiliary Service		5,29,550
Manpower Supply Service		Nil	Manpower Supply Service		
Total					5,29,550
Penalty under Sec 76.					

7. Learned Counsel for the appellant submits that in respect to the demands under the head - Mandap Keeper/ Commercial Coaching, the appellant allowed their Computer Lab to be used by various Government Departments, for imparting training to their employees, through various Institutes like NIIT, APTEC, etc. and collected rental charges from the user Departments, and the same cannot be considered as mandap keeper. He submits that there is no

mandap keeping services provided by the appellant, and relies on the decision in **India Trade Promotion Organisation Vs. Commissioner of C. Ex., Delhi-I – 2004 (164) ELT 163 (Tri. Del)**. Further, he also points out that part of the demand post 10.09.2004, the demand was confirmed under 'Commercial Coaching or Training Service'. He submitted that the demand under commercial coaching is also incorrect, because APTS does not provide any coaching, they only provide the computer lab and the training itself is provided by other external organizations. He also submits that there was no demand was raised under 'Commercial Coaching' for the period 2001-02 to 2005-06, therefore, confirming under this head is beyond the scope of the Show Cause Notice. In this regard, he placed reliance on the following decisions:

- Swapne Nagari Holiday Resort Vs. Commissioner of C. Ex., Raigad – 2019 (21) GSTL 559 (Tri. Mumbai)
- Reliance Securities Ltd. Vs. Commissioner of Service Tax, Mumbai-II – 2019 (20) GSTL 265 (Tri. Mumbai)
- J.S.E.L. Securities Ltd. Vs. Commissioner of C. EX. & S.T., Jaipur-I – 2017 (4) GSTL 8 (Tri. Del)

8. With respect to the demand under Business Auxiliary Service ["BAS"], it is the contention of the appellant that the various Government Departments/Organisations to whom the Appellant had provided services are not engaged in any business activities, but are engaged only in various sovereign functions, the activities of the appellant cannot at all be covered under Business Auxiliary Service, in terms of the decision of the Hon'ble Tribunal in the case of **UTI Technology Services Ltd. VS CCE – 2012 (26) STR 147 (Tri Mum)**. Further, it is their submission that It can be seen from the definitions of 'Business Auxiliary Service', that "Information technology services" is specifically excluded, during the entire period of demand in the instant case. Thus, the entire demand of Service tax confirmed under BAS is liable to be set aside. He also pointed out that the demand up to 09.07.2004 has been dropped on the ground that the Appellant is entitled to claim exemption under Notification 13/2003-ST dated 20.06.2003, while rejecting the contention of the Appellant, that the demand of Service tax, if any would arise post 16.06.2005 on account of exemption under Notification No. 14/2004-ST dated 10.09.2004, which was withdrawn vide Notification No. 19/2005-ST dated 07.06.2005 [w.e.f. 16.06.2005], on some unintelligible findings.

9. For the period 2006-07, with respect to the demand under BAS, it is the submission of the appellants that the demand of Rs.44,76,167/- under Business Auxiliary Service was made on a value of Rs.3,65,69,993/- and after considering the value of Rs.1,55,88,735/- on which the Appellant had paid Service tax, the remaining demand of Rs.25,68,106/- has been confirmed. Further, the Appellant had claimed exemption for various heads of income such as – sale of tender forms, xeroxing and printing and digital software and certificates, which are not covered under business auxiliary services. This claim was not allowed on the ground that the appellant had not produced any evidence in support of the claim. Learned Counsel submits that these amounts are identified even in the Annexure to the Show Cause notice, and therefore need no further evidence.

10. With respect to the demand under Manpower supplies, it is the contention of the appellants that they had deputed their employees to various Government Departments, to undertake various works relating the implementation of computers and claimed actual salaries of those employees plus 10% administrative cost, from the user departments. The Appellant is contesting the value of the salaries claimed (Re-imbusement) as reimbursement, as not to be included in the taxable value, and have paid Service tax on the 10% Administrative charges collected, though belatedly. However, the demand has been made on the entire value billed/collected. Learned Counsel places reliance on the decision of the Hon'ble Supreme Court in **UOI Vs Intercontinental Consultants and Technocrats India Pvt. Ltd. 2018 (10) GSTL 401 SC**, and submits that the demand of Service tax cannot be made on the reimbursement of salary claimed by them. He further also relies on the ruling in **Malabar Management Services Pvt. Ltd. Vs. Commissioner of Service Tax, Chennai – 2008 (8) STR 483 (Tri. Chennai)** and **Vidharbha Iron & Steel Co. Ltd. Vs. Commissioner of Central Excise, Nagpur – 2016 (45) STR 464 (Tri. Mumbai)**.

11. Ld. Counsel also strongly contests against the invocation of extended period. It is his submission that the Service Tax Department was aware of the activities of the appellant as early as on 25.02.2004, and subsequently some more communications (letters) were exchanged between the Department and Appellant, till February 2006. Thereafter, the show cause notice issued in March 2007 was received on 09.04.2007. Accordingly, invoking extended period of limitation alleging wilful misstatement for proposing to demand of Service tax for the period covering from 2001-02 to 2006-07, is incorrect. Further, it is

clearly evident from the responses given by the Appellant to the communications received from the Department that the Appellant had entertained a bona fide belief that their activities were either exempted or not liable for Service tax. Both the SCN and impugned order failed to demonstrate that the Appellant acted either deceitfully or fraudulently to evade taxes.

12. With respect to the Department Appeal No. ST/472/2008, the Ld. Counsel submits that Appeal is filed by the Revenue against non-imposition of equal amount of penalty under Section 78 of the Act. As against the ST demand of Rs.1,30,40,465/- confirmed against the Appellant, a penalty of Rs.1,16,29,685 alone was imposed under Section 78 of the Act, after considering the Service Tax already paid by the Appellant. Humbly submits that the demands of Service tax itself are not sustainable on merits and limitation, the question of imposition of penalty under Section 78 does not arise. Further Section 78 cannot be invoked for the demand made under normal period. He further submits that the issues are purely of interpretation and from 2004 onwards, the department is aware of the activities of the appellant. Further, in the second show cause notice, suppression of facts cannot be alleged and prayed that the benefit of Section 80 may be extended.

13. Learned CA appears for the appellant in ST/3116/2012 and adopts the arguments made by Mr. Venugopal.

14. Per contra, Learned AR relies on the impugned Order(s). He vehemently argued that impugned Orders are correct in law, and that the Department appeal is to be allowed and equal penalty must be imposed.

15. Having considered the rival contentions, we proceed to decide as under:

Mandap Keeper Service:

16. The definition of Mandap Keeper as per the Finance Act is as follows:

Section 65 (66): "mandap" means any immovable property as defined in section 3 of the Transfer of Property Act, 1882 (4 of 1882) and includes any furniture, fixtures, light fittings and floor coverings therein let out for a consideration for organising any official, social or business function.

Explanation. — For the purposes of this clause, "social function" includes marriage;

"mandap keeper" means a person who allows temporary occupation of a mandap for a consideration for organising any official, social or business function.

Explanation. — For the purposes of this clause, "social function" includes marriage;

Section 65 (105) (m) : *Taxable service means any service provided or to be provided to [any person], by a mandap keeper in relation to the use of mandap in any manner including the facilities [provided or to be provided to [such person] in relation to such use and also the services, if any, provided or to be provided as a caterer.*

17. At the outset, to qualify under Mandap Keeper services, there must be a service of letting out any immovable property including furniture, fixtures, light fittings etc., and which are let out for consideration for organising any official, social or business functions. From perusal of the records, it is seen that APTS is only providing computer labs to National Institute of Information Technology and other organisations, such as APTEC, who impart training to personnel of the Government and its organisations in computer awareness, it would be highly incorrect to hold that, they are providing 'Mandap Keeper Services'. From the definition extracted above, 'Mandap' means any immovable property, including furniture and fixtures, which is let out for consideration for organising any official or social or business function. According to common parlance and dictionaries, 'a function' involves 'a ceremony' or 'a social gathering'. The activity of temporary letting out of 'computer lab' for the purposes of training programme is 'a business activity' and not a 'business function'. Hence the activity of letting out the 'computer lab' cannot be held to be a 'Mandap Keeper Services'. Therefore, the demand under mandap keeper cannot sustain.

Commercial Coaching or Training:

18. 'Commercial training and coaching' is defined under 65(26) and 'Commercial training and coaching centre' is defined under Section 65(27) of the Finance Act, 1994.

Section 65(26)"commercial training or coaching" means any training or coaching provided by a commercial training or coaching centre;

*Section 65(27)"commercial training or coaching centre" means any institute or establishment providing commercial training or coaching for imparting skill or knowledge or lessons on any subject or field other than the sports, with or without issuance of a certificate and includes coaching or tutorial classes [** *];*

** 'but does not include preschool coaching and training centre or any institute or establishment which issues any certificate or diploma or degree or any educational qualification recognised by law for the time being in force" - omitted w.e.f. 08.04.2011.*

Section 65 (105) (zxc): *Taxable service means any service provided or to be provided to any person, by a commercial training or coaching centre in relation to commercial training or coaching.*

[Explanation. — *For the removal of doubts, it is hereby declared that the expression "commercial training or coaching centre" occurring in this sub-clause and in clauses (26), (27) and (90a) shall include any centre or institute, by whatever name called, where training or coaching is imparted*

*for consideration, whether or not such centre or institute is registered as a trust or a society or similar other organisation under any law for the time being in force and carrying on its activity with or without profit motive and the expression "commercial training or coaching" shall be construed accordingly;]**

** Inserted vide Finance Act, 2010 with retrospective effect from 01.07.2003.*

19. In terms of Appeal No. ST/361/2008, the demand with respect to commercial coaching cannot survive since there was no demand in the Show Cause Notice and therefore, the Order confirming the same is beyond the scope of the Show Cause Notice. For the periodical appeals, the demand for commercial coaching was confirmed by the impugned order for the period 10.09.2004 to 31.03.2007. As can be seen from the records, the coaching services are provided by NIIT and APTEC. APTS had no role in providing the coaching services, except letting out or providing their 'computer lab' for conducting training or coaching by other external organisations. Hence the demand of Rs. 55,745/- for the period 10.09.2004 to 31.05.2006 and Rs. 1,711/- for the period 2007-08 under 'Commercial Training or Coaching Services' is not sustainable in law.

Business Auxiliary Services:

20. Definitions: From 01.07.2003 to 09.09.2004

"business auxiliary service" means any service in relation to, -

(i) promotion or marketing or sale of goods produced or provided by or belonging to the client; or

(ii) promotion or marketing of service provided by the client; or

(iii) any customer care service provided on behalf of the client; or

(iv) any incidental or auxiliary support service such as billing, collection or recovery of cheques, accounts and remittance, evaluation of prospective customer and public relation services,

and includes services as a commission agent, but does not include any information technology service.

Explanation. - For the removal of doubts, it is hereby declared that for the purposes of this clause "information technology service" means any service in relation to designing, developing or maintaining of computer software, or computerized data processing or system networking, or any other service primarily in relation to operation of computer systems;

From 10.09.2004 to 15.06.2005

'(19) "business auxiliary service" means any service in relation to, —

(i) promotion or marketing or sale of goods produced or provided by or belonging to the client; or

(ii) promotion or marketing of service provided by the client; or

(iii) any customer care service provided on behalf of the client; or

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

(v) production of goods on behalf of the client; or

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

(vii) a service incidental or auxiliary to any activity specified in sub-clauses (i) to (vi), such as billing, issue or collection or recovery of cheques,

payments, maintenance of accounts and remittance, inventory management, evaluation or development of prospective customer or vendor, public relation services, management or supervision, and includes services as a commission agent, but does not include any information technology service and any activity that amounts to "manufacture" within the meaning of clause (f) of section 2 of the Central Excise Act, 1944 (1 of 1944).

Explanation. - For the removal of doubts, it is hereby declared that for the purposes of this clause, "information technology service" means any service in relation to designing, developing or maintaining of computer software, or computerised data processing or system networking, or any other service primarily in relation to operation of computer systems;

From 16.06.2005

(19) "business auxiliary service" means any service in relation to, —
(i) promotion or marketing or sale of goods produced or provided by or belonging to the client; or

(ii) promotion or marketing of service provided by the client; or

(iii) any customer care service provided on behalf of the client; or

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

Explanation.— For the removal of doubts, it is hereby declared that for the purposes of this sub-clause, "inputs" means all goods or services intended for use by the client;

(v) production or processing of goods for, or on behalf of, the client;

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

(vii) a service incidental or auxiliary to any activity specified in sub-clauses (i) to (vi), such as billing, issue or collection or recovery of cheques, payments, maintenance of accounts and remittance, inventory management, evaluation or development of prospective customer or vendor, public relation services, management or supervision,

and includes services as a commission agent, but does not include any information technology service and any activity that amounts to "manufacture" within the meaning of clause (f) of section 2 of the Central Excise Act, 1944 (1 of 1944).

Explanation. — For the removal of doubts, it is hereby declared that for the purposes of this clause, —

(a) "commission agent" means any person who acts on behalf of another person and causes sale or purchase of goods, or provision or receipt of services, for a consideration, and includes any person who, while acting on behalf of another person —

(i) deals with goods or services or documents of title to such goods or services; or

(ii) collects payment of sale price of such goods or services; or

(iii) guarantees for collection or payment for such goods or services; or

(iv) undertakes any activities relating to such sale or purchase of such goods or services;

(b) "information technology service" means any service in relation to designing, developing or maintaining of computer software, or computerised data processing or system networking, or any other service primarily in relation to operation of computer systems;

Section 65 (105)(zzb): Taxable service means any service provided or to be provided to a client by [any person]* in relation to business auxiliary service.

* Substituted for "commercial concern" w.e.f. 01.05.2006.

21. APTS is acting as technical consultant and nodal agency to Government departments/ corporations for procurement of computers, software peripherals on Government orders from time to time. It assists the Government departments in software development and implementation. When the government departments send their requisitions to APTS along with funds, APTS identifies suitable agencies for fulfilment of the said requirements of the government departments, for which APTS charges certain percentage (Administrative charges) on the value of the equipment/ service arranged. In the course of the activity undertaken by APTS, they collect service charges for procurement of computers, peripherals, evaluation of tenders, acceptance testing, funds transfer, networking, computer rentals, arranging AMC, supervision of software development, printing through agencies, computer software, digital certificate software etc. The Show Cause Notice proposed to demand service tax from APTS under 'business auxiliary services'.

22. On perusal of records, it is seen that the demand up to 09.07.2004 has been dropped on the ground that the Appellant is entitled to claim exemption under Notification 13/2003-ST dated 20.06.2003, while rejecting the contention of the Appellant that the demand of Service tax, if any would arise post 16.06.2005 on account of exemption under Notification No. 14/2004-ST dated 10.09.2004, which was withdrawn vide Notification No. 19/2005-ST dated 07.06.2005 [w.e.f. 16.06.2005]. While extending the benefit of exemption under Notification No. 13/2003-ST till 09.07.2004, the Adjudicating Authority proceeds to confirm the demand of Service tax even for the period prior to 09.07.2004 (from 01.04.2004), merely on the ground that the Appellant had failed to provide the break-up of value of taxable services under BAS for the period 10.07.2004 to 31.03.2005, which is completely illegal and cannot be sustained in law. Further, the demand for Service tax under BAS has been confirmed for the entire period of 2005-06, without accepting the claim of the Appellant that they are only liable for Service tax from 16.06.2005. Thus, the impugned order is unsustainable in law.

23. In the impugned order at para 41, the Adjudicating Authority categorises the activities carried out by the appellant on which the Service tax was demanded under BAS. As can be seen from such categorisation, all the activities are related IT Services only. It can be seen from the definition of Business Auxiliary Service, "information technology services" is specifically excluded, during the entire period of demand in the instant case. Thus, the entire demand of Service tax confirmed under BAS is liable to be dropped on

this count as well. It is further seen that the activities of the Appellant appeared as 'commission agent' to classify them under 'Business Auxiliary Service'. As can be seen from para 41 of the impugned order, the Adjudicating Authority himself categorized the activities/services of the Appellant. A perusal of the said categorisation of services would clearly reveal that, the Appellant would only assist the Government Departments/Organisation for availing/procuring various IT related hardware/services, and for such assistance, they collect certain administrative charges. Therefore, the services of the Appellant do not satisfy the definition of 'commission agent' so as to bring them under the category of 'Business Auxiliary Services'.

24. Further, with respect to exemption claim rejected on income such as, sale of tender forms, xeroxing and printing and digital software and certificates, which are not covered under business auxiliary services. This claim was not allowed on the ground that the appellant had not produced any evidence in support of the claim. However, as can be seen, they are identified clearly in the Show Cause Notice itself, therefore, the denial of exemption is incorrect.

Manpower Supply:

25. Definitions:

Section 65(68): "manpower recruitment or supply agency" means any [person] engaged in providing any service, directly or indirectly, in any manner for recruitment or supply of manpower, temporarily or otherwise, [to any other person];

Section 65(105)(k): Taxable service means any service provided or to be provided [to any person], by a manpower recruitment or supply agency in relation to the recruitment or supply of manpower, temporarily or otherwise, in any manner;]

Explanation. — For the removal of doubts, it is hereby declared that for the purposes of this sub-clause, recruitment or supply of manpower includes services in relation to pre-recruitment screening, verification of the credentials and antecedents of the candidate and authenticity of documents submitted by the candidate.

26. In the instant case, the Appellant, wherever required, had deputed their employees to various Government Departments, to undertake various works relating the implementation of computers and claimed reimbursement of actual salaries of those employees, plus 10% administrative cost, from the user departments. The Appellant is contesting the value of the salaries claimed as reimbursement, as not to be included in the taxable value and have paid Service tax on the 10% Administrative charges collected, though belatedly. However, the demand has been made on the entire value billed/collected.

27. The issue is no longer *res-integra* as the Hon'ble Supreme Court have settled the issue of re-imburement to rest. Our view is further strengthened by the decision of **Malabar Management Services Pvt. Ltd. Vs. Commissioner of Service Tax, Chennai – 2008 (8) STR 483 (Tri. Chennai)** which was affirmed by the Hon'ble Supreme Court as reported in 2019 (22) GSTL J56 (SC) and **Vidharbha Iron & Steel Co. Ltd. Vs. Commissioner of Central Excise, Nagpur – 2016 (45) STR 464 (Tri. Mumbai)** affirmed by the Hon'ble Supreme Court as reported in 2016 (45) STR J204 (SC)]. This view was also followed by the Principle Bench in the case of **Rajcomp Info Service Ltd., Vs. CCE, Jaipur** reported in 2022 (65) G.S.T.L. 103 (Tri.-Del).

EXTENDED PERIOD:

28. It is seen from the records that the Department started this investigation vide letter from the Superintendent in C. No. IV/16/15/2004-S.T. dated 25.02.2004. Thereafter, there were many communications between the Department and the Appellant regarding the nature of their services. In between, the Managing Director of the Appellant - Shri. Randeep Sudan, IAS had also written to the Principal Secretary to the Government of Andhra Pradesh seeking clarification regarding the payment of Service Tax. Department being in communication and having started their investigation in 2004, had only issued the Show Cause Notice in March/ April 2007 invoking extended period of limitation. It is settled law that when all the relevant facts are in the knowledge of the department, there cannot be a case for the Department alleging wilful misstatement for invoking extended period of limitation. Further, it is clearly evident from the responses given by the Appellant to the communications received from the Department, that the Appellant have entertained a bona fide belief that their activities were either exempted or not liable for Service tax. Both the SCN and impugned order failed to demonstrate that the Appellant acted either deceitfully or fraudulently to evade taxes. The Appellant being a Government Company, cannot be alleged to have entertained any intention to evade payment of Service tax. The issues are purely of interpretation and from 2004 onwards the department is aware of the activities of the appellant. In view of the above, we hold that on grounds of limitation also, the impugned orders need to be set aside.

29. Consequently, the Departmental Appeal also does not survive in as much as the demands of Service tax itself are not sustainable on merits and

limitation, the question of imposition of penalty under Section 78 does not arise.

30. In this view of the matter, the Appeal(s) are allowed and the Impugned Order(s) are set aside. The Appellant is entitled to consequential benefits, in accordance with law. Departmental Appeal No.ST/472/2008 is dismissed.

(Pronounced in the Open Court on 21.11.2023)

(ANIL CHOUDHARY)
MEMBER (JUDICIAL)

(A.K. JYOTISHI)
MEMBER (TECHNICAL)