

Tax



Indirect Tax Alert

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CESTAT decision – Service Tax on Management Consultant’s Services (MCS)¹

Brief Facts

M/s. Nirulas Corner House Pvt. Ltd. (‘the Appellants’) were engaged in the food and confectionary business. They had entered into an agreement with M/s. Sagar to permit them to run restaurants in the name of “Nirulas” as per the specified plans with regard to the location of the restaurant, area, interiors and other details. As per the terms of the agreement, it is the Appellants who decide the items that are to be sold by the restaurant, the method of preparation of the items, the quality and the prices of the items. The Appellants have even placed their employees in the restaurants to supervise the operations.

The service tax authorities demanded service tax on the services provided by the Appellants to M/s. Sagar under the category of MCS. The present decision relates to the appeal filed by the Appellants against the order of the Commissioner of Service Tax confirming such demand.

Contentions of the Appellant

The Appellants put forth the following contentions to substantiate their plea that their services were not covered by the definition of the term “management consultant” –

- The Appellants cannot be regarded as a management consultant and advisor merely because of the use of these terms in the

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agreement. The actual roles played and the responsibilities undertaken as per the agreement need to be considered.

- The role of a management consultant is limited to the provision of advice, consultancy and technical assistance. The Appellants were substantially involved in the day-to-day running of the restaurants by deploying their personnel in the restaurants. Hence the role played by them goes far beyond the role played by a management consultant. Such an arrangement cannot be considered as rendering the services of a management consultant and hence, the services provided by the Appellants were not taxable under the category of MCS.
- The Appellants establish, run and manage the restaurants belonging to M/s. Sagar. This role of establishing and running the restaurant in the manner prescribed can fall only under the scope of a franchise agreement. Accordingly, the Appellants have been making payment of service tax under the category of Franchise Services with effect from 1 July 2003.

Contentions of the Respondent

In order to advance its case for justifying the demand for service tax from the Appellants, the service tax authorities referred to the various clauses of the agreement between the Appellant and M/s. Sagar wherein the role of the Appellant was described as that of a management consultant and advisor. Accordingly, the Appellants were required to pay service tax under the category of MCS.

Observations of CESTAT

The following observations were made by the Principal Bench of the Hon'ble CESTAT -

- The definition of the term 'management consultant' makes it clear that what is envisaged from a consultant is merely the provision of advisory services and not the actual performance of the management function. The decision in the case of *Basti Sugar Mills Ltd. Vs. CCE, Allahabad*² supports this argument.
- The role of a consultant is to render advice, consultancy and technical assistance in the matters in which he possesses expertise. However, the decision of acceptance or otherwise of the advice is left to the management and the consultant is not authorized to impose the advice rendered.
- Where the agreement confers operational autonomy and responsibility upon the contracted party, the relationship is not one of consultancy.
- The Appellant, in the present case is required to

manage, sell and supervise the preparation of food items. Further, the Appellant has placed their manpower for supervising and operating the restaurant. Hence, the role of the Appellant goes far beyond the services provided by a management consultant. Accordingly, the services provided by the Appellant would not be taxable under the category of MCS.

Conclusion

The CESTAT held that the Appellant was not rendering Management Consultant's Services.

Source:

1. CESTAT decision in the matter of M/s. Nirulas Corner House Pvt. Ltd. Vs. Commissioner of Service Tax, New Delhi (2009-TIOL-130-CESTAT-DEL)
2. CESTAT decision in the matter of Basti Sugar Mills Ltd. Vs. CCE, Allahabad (2007-TIOL-657-CESTAT-DEL)

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