**SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com**

**Creative Marine Services Vs. Commissioner of C. Ex.**

**Creative Marine Services Vs. Commissioner of C. Ex.**

**SooperKanoon Citation** : sooperkanoon.com/42466

**Court** : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

**Decided On :** Apr-20-2006

**Judge** : K Kumar, a T K.K.

**Appellant** : Creative Marine Services

**Respondent** : Commissioner of C. Ex.

**Judgement** :

1. The appellant is primarily engaged in the business of providing manpower inter alia of supply of officers and crew for engagement on vessels. They entered into agreement with Great Eastern Shipping Company and other shipping companies, under which they were required to provide officers and crew who are of requisite qualification and could satisfactorily execute shipping board duties and attend day to day ship board maintenance and keep of vessel. Besides this the appellants were required to provide various shipping management services which is set out in Annexure 'B' to the agreement which included payment to officers and crew after deduction of income tax and filing of return, arranging and providing food on board, undertaking repairs of the ships and various other ancillary functions. They were registered under the service tax as man power recruiting agency in spite of their contention that the service undertaken by them was a ship management and not that of man power recruitment. As per the department's directions, they continued to pay the service tax as a man power recruitment agency and no objection was taken to that. However, the department change their stand in the 2004 and issued a show cause notice to them stating that the service provided by

them was more appropriately classifiable as management consultancy services rather than the man power recruitment service. The show cause notice was subsequently confirmed by the Deputy Commissioner and upheld in appeal by the Commissioner (Appeals).

2. The learned Counsel for the appellants submitted that the services provided by them is in the nature of ship management service and they have accordingly pleaded before the department that they cannot be considered as a man power recruitment agency but this was not acceded to by department and it was on their insistence that they started paying service tax as a man power recruitment agency. It is their contention that the services provided by them is more appropriately covered by the ship management services which has been newly introduced in the budget 2006. They do not provide any service which could be termed as a management consultancy service as they are not providing any advice, consultancy or technical assistance to any organisation.

They invited attention to the definition of the management consultant.

As per the definition a management consultant is a person who is engaged in providing any service either directly or indirectly in connection with the management of any organisation in any manner and include any person who render any advice, consultancy or technical assistance relating to conceptualizing, devising, development, modification, rectification or upgradation of any working system of any organisation. It was submitted that the appellant is undertaking only the supply of qualified crew and officers and providing of services relating thereto which cannot under any circumstances qualify as advice/consultancy or technical assistance. Further the management consultancy service is required to be provided to an organisation but in their case they are supplying the man power for utilization of ship which cannot be considered as organisation. The services provided by them can classify as only ship management service which has been introduced in the year 2006 and shall accordingly register themselves for the same.

3. Learned D.R. submits that the organisation in this case is not a ship but the shipping company with whom contract has been entered into for supply of man

power etc. The activities of the appellants are of those in relation to management as are set out in Annexure 'B' to the agreement and therefore, they are rightly covered under the management consultancy service. The department has earlier asked to pay service tax as a man power recruitment agent but later on realized that their service was more appropriately classifiable as a management consultant services and it is in view of this fact the demand is limited to the normal period and not extended period.

4. We have considered the submissions. We find that as management consultant the appellants' plea that they are not providing any service which can be classified as an advice, technical assistance, consultancy so as to qualify being covered as a management consultant has considerable force. However, it is admitted fact that they are providing services relating to management and since the management consultant has been defined as any person who is engaged in providing any service, either directly or indirectly in connection with the management of any organisation, the appellants have not been able to make out a case for full waiver of pre-deposit. We, therefore, direct; them to deposit Rs. 8 Lakhs towards service tax within six weeks from the date of receipt of this order and on such payment deposit of balance amount of service tax and penalty imposed shall stand waived and recovery thereof stayed till disposal of the appeal. Compliance to be reported on 20-06-2006.

**SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com**