

**Malabar Management Services Vs. Commr. of Service Tax**

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**Court :** Customs Excise and Service Tax Appellate Tribunal CESTAT Tamil Nadu

**Decided On :** Feb-16-2007

**Reported in :** (2007)8STT480

**Judge :** P Chacko, K T P.

**Appellant :** Malabar Management Services

**Respondent :** Commr. of Service Tax

**Judgement :**

1. The Commissioner has demanded Service Tax of about Rs. 1.48 crores from the appellants on the gross amount collected by them from M/s.

1CICI Bank Limited for services designated as "Business Auxiliary Services" rendered during the period July 2003 to March 2005. An amount of Rs. 1 lakh paid earlier by the party has been appropriated towards this demand. A penalty equal to tax has also been imposed on them under Section 78 of the Finance Act, 1994, besides another penalty of Rs. 100/- per day under Section 76 of the Act.

2. After examining the records and hearing both sides, we note that the appellants were marketing the bankers' products during the above period through their employees and that the salaries paid and the provident fund contributions and insurance contributions made in respect of these employees by the appellants were reimbursed by the Bank. It is on the gross amount so collected by the appellants from the Bank for the above services that the Commissioner demanded

Service Tax. The demand is in adjudication of a show-cause notice dated 25-11-2005 covering the aforesaid period. The period from November 2004 to March 2005 is within the normal period of limitation prescribed under Section 73 of the Finance Act and, according to Id. Counsel's estimate, the tax, if found payable for this period, would be around Rs. 69 lakhs. According to the Id. Counsel, the demand for the earlier period is time-barred inasmuch the extended period of limitation was not invocable on the facts of this case. All the requisite information had been made available to the Department through statements as early as in 2004 and therefore it was not open to them to allege suppression or concealment of facts, for the purpose of invoking the extended period of limitation under Section 73 *ibid.* Id. Counsel has also made an endeavour to claim *prima facie* case on merits, which appears to be very strenuous. It is submitted that there was no proper execution of agreement between the appellants and the Bank and therefore the reliance placed by the Commissioner on the "terms and conditions" of the so-called agreement will not be tenable.

He also submits that the agreement was cancelled by the party. We wonder how a non-existent agreement can be cancelled ! On the facts of this case, it appears, some of the banking activities, in fact, were outsourced. The appellants, who administered such activities for the benefit of the Bank, obtained reimbursement of the expenses from the Bank. No Circular of the Board nor any Notification of the Central Government has been placed on record to show that any of these reimbursements was liable to be abated from the "gross amount" for the purpose of payment of service tax. The appellants do not seem to have *prima facie* case against the demand of tax. Their plea for financial hardships is not supported by any evidence either. It is submitted by Id. Counsel that they are no longer undertaking such activity for the Bank. However, they are said to be rendering some other services to the Bank. In any case, they have not surrendered their registration certificate pertaining to Business Auxiliary Service. It is fairly stated by the Id. Counsel that they are maintaining a live account containing Rs. 10,00,000/- This would indicate, to some extent, the financial soundness of the assessee.

3. We have heard Id. SDR on all the issues. He has reiterated the findings of the Commissioner and has insisted on pre-deposit.

4. In view of the findings recorded above and in a lenient approach, we direct the appellants to pre-deposit an amount of Rs. 50,00,000/- (Rupees fifty lakhs) within eight weeks (this period specifically requested for) and report compliance on 20-4-2007.

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