

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE
TRIBUNAL
BANGALORE**

REGIONAL BENCH - COURT NO. 1

Service Tax Appeal No. 2374 of 2011

(Arising out of Order-in-Revision No.1/2011 dated 06.05.2011
passed by the Commissioner of Central Excise and Service Tax,
Mangalore.)

M/s. T.A. Pai Management Institute
P.B. No.9, 80, Badagubettu,
Manipal – 576 104.

Appellant(s)

VERSUS

**The Commissioner of Central Excise
and Service Tax**
VII Floor, Trade Centre,
Bunts Hotel centre,
Mangalore – 575 003.

Respondent(s)

WITH

Service Tax Appeal No. 2323 of 2012

(Arising out of Order-in-Appeal No. 227/2012 dated 17.05.2012
passed by the Commissioner of Central Excise (Appeals),
Mangalore.)

M/s. T.A. Pai Management Institute
P.B. No.9, 80, Badagubettu,
Manipal – 576 104.

Appellant(s)

VERSUS

**The Commissioner of Central Excise
and Service Tax**
VII Floor, Trade Centre,
Bunts Hotel centre,
Mangalore – 575 003.

Respondent(s)

APPEARANCE:

Shri N. Anand, Advocate for the Appellant

Shri Rajesh Shastry, Superintendent (AR) for the Respondent

CORAM:

**HON'BLE MR. P. A. AUGUSTIAN, MEMBER (JUDICIAL)
HON'BLE MRS. R. BHAGYA DEVI, MEMBER (TECHNICAL)**

FINAL ORDER NO. 20968 - 20969 / 2025

DATE OF HEARING: 19.03.2025

DATE OF DECISION: 09.07.2025

PER: R. BHAGYA DEVI

These two appeals are filed by the appellant M/s. T. A. Pai Management Institute. Appeal No. ST/2374/11 is filed against Order-in-Revision No. 01/2011 dated 06.05.2011 passed by the Commissioner of Central Excise, Mangalore and Appeal No. ST/2323/2012 is filed against Order-in-Appeal No. 227/2012 dated 17.05.2012 passed by the Commissioner (Appeals), Mangalore.

2. Briefly the facts of the case are that the appellants are rendering taxable services under the category of 'Management Consultancy Services' and also various academic courses. During audit verification, it was noticed that the appellant was engaged in accommodating Multinational Companies (MNCs) and other recruitment agencies to conduct campus selection of candidates, for which different amounts were collected per successful candidates once the placement of service was confirmed. Since this activity was covered under 'Manpower Recruitment or Supply Agency Services' in terms of Section 65(68) of the Finance Act 1994 read with Section 65(105k) of the Finance Act 1994, hence, the notice was issued demanding service tax for the relevant period. The Commissioner (Appeals) in the impugned order held that the services were rightly classifiable under 'Manpower Recruitment or Supply Agency Services', since the word 'commercial concern' had nothing to do with the organization being a Trust and for the later period, the above definition was amended and was substituted with the word 'any person' hence, whether a concern is a commercial or a trust is

irrelevant for the purpose of classification. Accordingly, invoking extended period of limitation, the demand was confirmed along with interest and respective penalties were also imposed. Aggrieved by these orders, the appellant is in appeal before us.

2. The Learned counsel on behalf of the appellant submitted that the they are charitable trust mainly engaged in imparting management education programs and in the course of imparting education to its students, they also allow companies to conduct campus interviews in their premises to enable their students to seek placement in the participating companies. It is submitted that all the expenses in connection with these interviews is borne by the respective participating companies and if the student is found suitable, the concerned company makes a direct offer of appointment and the appellant has no role in the selection or rejection of the students. As per the policy, the appellant charges participation free for recruiting companies and they are also invited to contribute a sum towards corpus fund which is utilized to promote and enhance education infrastructure and faculty development efforts. It is further stated that there is no 'consideration' charged by the appellant inasmuch as the recruiting companies made voluntary contribution in the nature of donation and no 'participating fee' was charged by the appellant and the entire contribution was credited to the corpus fund; hence, the question of levy of service tax on such consideration is not sustainable. On the ground of limitation, it is submitted that there have been decisions in favour and against the appellant, hence, the question being one of interpretation, considering the bona fide belief of the appellant, mala fide intention cannot be established in both the appeals. Moreover, when the first show-cause notice invoked suppression, the second one for the same issue cannot invoke suppression as is a

settled law. In view of the above, it is submitted that the first appeal, demand is entirely beyond the normal period and the second cannot sustain beyond the normal period.

3. The Authorized Representative for the Revenue submitted that appellant being is a trust cannot be a reason for not paying service tax, since the institution themselves have a tie-up agreement with the recruiting companies for the placement cells, according to which, the recruiting companies have to pay upfront amount of Rs.25,000/- per student for domestic operations or placements and to pay upfront amount of 1000 U.S. dollars per student for letting hire its students for overseas assignments. It is further submitted that the amount so collected cannot be treated as donation to claim any exemption relying on the decision of the Tribunal in the case of **Sydenham Institute of Management vs. Commissioner of Central Excise Mumbai-I: 2016 (44) STR 69 (Tri.-Bom.)**. It is submitted that the Tribunal had set aside the demand on the ground that placement charges were collected from the students and not from the recruiting companies. In the instant case, since the placement charges are collected from the prospective employers, the demand is to be sustained. It is also submitted that the reliance placed on by the original authority in appeal No. 2374/2011 to drop the demand relying on the decision of the Tribunal in the case of *Great Lakes Institute of Management vs. CST 2008 (10) STR 202 (Tri.-Chennai)* is no more a good law.

4. Heard both sides. The only issue to be decided is whether the recruiting facility to MNCs and other recruiting organisations by the appellant is liable to service tax under the category of 'Manpower Recruitment or Supply Agency Service'. The period of dispute is from 13.05.2003 to 31.03.2004 and 01.04.2004 to

31.3.2005 in Appeal No.ST/2374/2011 and the period of dispute is from 01.05.2006 to 28.02.2009 in Appeal No.ST/2323/2012.

4.1. It is not disputed that the appellant charges per student for being selected for the campus selections. Let's examine the relevant definitions during the period of dispute. For the period from 09.07.1997 to 16.06.2005, Section 65(68) of the Finance Act, 1994 defined '*Manpower Recruitment Agency Service*' as '*any commercial concern engaged in providing any service, directly or indirectly, in any manner for recruitment of manpower, to a client*'. This definition was later on amended from 16.05.2005 to 01.05.2006, which read as '*means any commercial concern engaged in providing any service, directly or indirectly, in any manner for recruitment of manpower, temporarily or otherwise to a client*'. From 1.5.2006 to 16.5.2008, it reads as '*any person engaged in providing any service, directly or indirectly, in any manner for recruitment or supply of manpower temporarily or otherwise, to a client*'. Thereafter, from 16.5.2008 to 30.06.2012, it read as: '*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*'.

4.2 There is no dispute that the appellant collects Rs.25,000/- per student for domestic operations and US \$ 1000 per student for overseas assignments towards their corpus fund. The appellant is a privately owned educational academy run under trust primarily engaged in commercial activity. The only contention is that the appellant is a trust and having no profit motive and hence, they cannot be treated as a 'commercial concern' as is defined in the Section 65(68). In the first appeal ST/2374/2011 for the period 2003-2004 and 2004-2005, the

claim of the appellant is that they are not a commercial concern. This aspect cannot be accepted in view of the fact that each student has been asked to pay Rs.25,000/- and US \$ 1000 respectively, for the domestic recruitments and international assignments. In view of this, the appellant being a trust cannot in any way rule-out the profit motive for having received these payments and there is nothing on record to show that these are voluntary donations. Accordingly, the liability to pay service tax needs to be sustained. Moreover, the reliance placed on by the original authority on *Great Lakes Institute* (supra) stands referred to Larger Bench and the Larger Bench in the case of *Great Lakes Institute of management Ltd. vs. Commissioner of Service Tax, Chennai as reported at 2013 (32) S.T.R. 305 (Tri. - LB)*, reference was answered as:

25. On the aforesaid analysis, we answer the reference as follows :

(i) The taxable service of "commercial training or coaching" occurs when any institute or establishment is engaged in the activity of imparting skill, knowledge or lessons on any subject or field (excluding sports), irrespective of whether such imparting of skill, knowledge or lessons is in respect of particular discipline or a broad spectrum of disciplines/academic areas; irrespective of the nomenclature or description of the institute or establishment, as a coaching or training centre or an educational institution; regardless of whether an institute or establishment is incorporated by or registered under any law; and irrespective of distinctions on the basis of curriculum, course content, teaching methodology, course duration or otherwise. Activities of imparting skills, knowledge, lessons on any subject or field or when provided by any entity, institution or establishment which is excluded by a specific and legislated exclusionary clause would alone be outside the fold of the taxable activity.

4.3. In view of the above, the institute being a trust has nothing to do with the service rendered by the appellant of recruitment by collecting the amounts from the respective students continues to be a commercial concern, hence, the demand in this appeal is sustained. The show-cause notice was issued on 12.03.2009 for the period from 13.05.2003 to 31.03.2004 and 1.4.2004 to 31.3.2005. It is seen from the records that the audit was conducted in July 2007 and audit report was submitted in August 2007; however, the show-cause notice was issued on 12.03.2009 nearly after one and half years. Since the appellant was already registered for 'Management Consultancy Services' and were regularly filed ST-3 returns, the question of *mala fide* intention cannot be alleged against the appellant. Also, no grounds have been brought on record to prove intention to evade payment except to state that the facts were not brought on record in their ST-3 returns and was known to the Revenue only after the audit was conducted cannot be sustained, since Revenue got to know the facts in 2007 and issued notice only in 2009; therefore, the demands are set aside on limitation.

4.4. In the second appeal ST/2323/2012, the definition is amended to mean 'any person' hence, the claim of the appellant for this period is absolutely of no consideration as they are liable to pay tax on the amounts received by them from the students and based on the discussions above, the demand in the second appeal is also sustained. However, with regard to limitation, we agree with the appellant that since the first show-cause notice had invoked suppression, the question of invoking suppression for the subsequent period does not arise. Since the show-cause notice was issued on 12.4.2010 for the period 01.05.2006 to

ST/2374/2011

ST/2323/2012

28.02.2009, the demand for extended period cannot be sustained.

4.5. In view of the above, Appeal No.ST/2374/2011 is allowed on limitation since the entire demand is beyond the normal period and in Appeal No.ST/2323/2012, the demand is sustained for the normal period.

Appeals are disposed of on above terms.

(Order pronounced in Open Court on 09.07.2025.)

(P. A. AUGUSTIAN)
MEMBER (JUDICIAL)

(R. BHAGYA DEVI)
MEMBER (TECHNICAL)

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