

**In The Customs, Excise & Service Tax Appellate Tribunal
West Zonal Bench At Ahmedabad**

Appeal No. ST/10334-10335/2018-DB

[Arising out of OIO-AHM-EXCUS-001-COM-002-003-17-18 -Dated 23.11.2017 passed by CST-
Ahmedabad]

M/s Indian Institute of Management Appellant

Vs.

C.S.T.-Service Tax – Ahmedabad Respondent

Represented by:

For Appellant: Mr. Tarun Govil (Advocate), Vipul Khandhar (C.A.)

For Respondent: Mr. T.G. Rathod (AR)

CORAM:

HON'BLE MR. RAMESH NAIR, MEMBER (JUDICIAL)

HON'BLE MR. RAJU, MEMBER (TECHNICAL)

Date of Hearing: 04.12.2018

Date of Decision:01.04.2019

Final Order No. A / 10622-10623 /2019

Per: Raju

These appeals have been filed by Indian Institute of Management (Ahmedabad) against confirmation of demand of Service Tax, interest and imposition of penalty.

2. Ld. Counsel for the appellant pointed out that the appellant is society registered under Society Registration Act, 1860 and are engaged in providing Management Consultancy Service, Commercial Training and Coaching, Man Power Recruitment Service, Health Club and Fitness Service, Renting of Immovable Property and Accommodation Services for which they are registered under Service Tax since 27.05.2003. He pointed out that the SCN was issued to them alleging that the long duration courses are not approved by AICTE. Consequently it alleged that they are required to pay service Tax on the amounts received for long duration courses.

2.1 He pointed out that one notice was issued for the period 2009-2010 to 2013-14 invoking extended period of limitation. The second notice has been issued within the period of limitation for the financial year 2014 - 2015. Ld. Counsel pointed out that the primary allegation in the SCN is that there long duration courses are not recognized by AICTE. Ld. Counsel pointed out that recognition by AICTE is not a necessary pre-condition for exemption from the Service Tax.

2.2 Ld. Counsel pointed out that Section 65 (26) of the Finance Act, 1994 defines Commercial Training or Coaching in the year 2003 as under:-

“Commercial training or coaching” means any training or coaching provided by a commercial training of coaching center.

He further pointed out that Section 65 (27) of the Finance Act defines

‘Commercial Training or Coaching Center’as follows:

“Commercial training or coaching center” means any institute or establishment providing commercial training or coaching for imparting skill or knowledge or lessons on any field other than sports, with or without issuance of a certificate and includes coaching or tutorial classes but does not include pre-school coaching and training center or any institute or establishment which issues any certificate or diploma or degree or any educational qualification recognized by law for the time being in force.

Ld. Counsel pointed out that definition of ‘commercial training or coaching center’ originally excluded from its ambit any institute or establishment which issues any certificate or diploma or degree or any educational qualification recognized by law for the time being in force.

Ld. Counsel argued that there is no requirement that the courses should be registered under AICTE as alleged in the SCN. He argued that so long as the institute conducts any courses which are

recognized by 'any law', the said coaching institute would be outside the preview of Service Tax.

2.3 Ld. Counsel relied on the Circular No. 86/4/2006 dated 01.11.2006 wherein following has been clarified:

"The issue has been examined by the Board. A 4. Commercial concern is an institution/establishment that is primarily engaged in commercial activities, having profit as the primary aim. It is not one/ few isolated activities which determine whether or not as institution is a commercial concern. It is the totality of its activity and the objective or its existence that determines the commercial nature of an institution as an 'entity' or a 'concern'. The principal activity of institutes like IITs or IIMs is to impart education without the objective of making profit. Therefore, these institutes cannot be called a commercial concern, even if on some of their activities (like holding campus interviews), they charge fee. Accordingly, these institutes were not liable to pay service tax prior to 01-05-2006 under the category of 'manpower recruitment of supply service'. As regards the period after 1-5-06, decision should be taken after taking into account all material facts on case to case basis."

He argued that the CBEC had originally also recognized that the appellants are not a commercial concern, and therefore, not covered under the definition of commercial coaching and training. Ld. Counsel relied on the Service Tax Circular No. 107/01/2009-SC dated 28.01.2009. In the said Circular following has been clarified.

"2. Commercial Nature of Institute

The first issue arises from the very name i.e. Commercial 'training or coaching center'. Many service providers argue that the word commercial appearing in the aforementioned phrase, suggests that to fall under this definition, the establishment or the institute must be commercial (i.e. having profit motive) in nature. It is argued that institutes which are run by charitable trusts or on no-profit basis would not fall within the phrase 'commercial training or coaching center' and none of their activities would fall under the taxable

service. This argument is clearly erroneous. As the phrase 'commercial training or coaching center' has been defined in a statute, there is no scope to add or delete words while interpreting the same. The definition commercial training or coaching center has no mention that such institute must have 'commercial' (i.e. profit making) intent or motive. Therefore, there is no reason to give a restricted meaning to the phrase. Secondly, service tax, unlike direct taxes, is chargeable on the gross amount received towards the service charges, irrespective of whether the venture is 'profit making, loss making or charity oriented' in its motive or its outcome. The word "Commercial" used in the phrase is with reference to the activity of training or coaching and not to the nature or activity of the institute providing the training or coaching. **Thus, services provided by all institutes or establishments, which fulfills the requirements of definition, are leviable to service tax."**

He pointed out that this is clearly a departure from the earlier stand where the word 'commercial' appearing in the 'commercial training and coaching center' was deemed to qualify the 'institute or center' however in the Circular of 2009, the said stand was changed and the term 'Commercial' appearing in the definition of 'commercial coaching and training center' was deemed to qualify the nature of training. Ld. Counsel also relied on the decision of Tribunal in the case of Institute of Chartered Financial Analysis 2018 (17) STR 501 (CESTAT).

2.4 Subsequently by Finance Act 2010, the explanation was added with retrospective effect from 01.07.2003. The explanation read as follows:

"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 10(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 organization 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.

2.5 Ld. Counsel pointed out that w.e.f. 01.5.2011 the definition of commercial coaching and training center was amended. W.e.f.

01.05.2011 the definition of commercial coaching and training center was amended as follows:

“Commercial Coaching or Training Centre means any institute or establishment providing commercial coaching or training for inspiring skill or knowledge or lessons on any subject or field other than sports, with or without issuance of a certificate and includes coaching or tutorial classes”.

Simultaneously Notification 33/2011-ST dated 25.04.2011 was issued (w.e.f. 01.05.2011) to exempt any coaching or training leading to grant of a certificate or diploma or degree or any educational qualification which was recognized by any law for the time being in force, when provided by any commercial coaching or training centre. In a sense, the exemption which was earlier granted to all coaching and training given by institutes which were, inter alia, providing Certificate or diploma or degree or any educational qualification recognized by law, was narrowed down and restricted to only those commercial coaching and trainings leading to grant of certificate or diploma or degree or any educational qualification recognized by any law. Therefore, while earlier for identical courses provided by two different institutes could be treated differently for the purpose of levy of service tax, w.e.f. 01.05.2011 the said distinction was removed by making the exemption course specific instead of institute specific.

2.6 Ld. Counsel for the appellant pointed out that IIM was set up in 1961 by a Cabinet Note of Govt. of India as an autonomous body and out of the regulatory fold of the Govt. of India. He pointed out that AICTE came into existence in 1968. He further pointed out that since IIM is not under UGC, therefore, the educational qualifications granted by them are called diplomas. Ld. Counsel relied on the decision of the Tribunal in the case of ITM International (P) Ltd. 2017 (7) GSTL 448

(Tri. Del.) He pointed out that the said decision was followed by Tribunal in the case of IILM Under graduate Business School reported in 2018 (10) GSTL 345. Ld. Counsel also has relied on the decision of Hon'ble High Court of Delhi in the case of Indian Institute Aircraft Engineering 2013 (30) STR 689 (Del.). Ld. Counsel also relied on the clarification issued by CBEC vide Dof. No. 334/8/2016 – Tru dated 29.02.2016. Ld. Counsel further pointed out that the Ministry of Education vide Office Memorandum dated 31.08.1966 has recognized the diploma granted by the appellant in following words:

“The Government of India have decided to recognize the post-graduate diploma in Business Administration awarded by the (i) Indian Institute of Management, Calcutta, and (ii) Indian Institute of Management, Ahmedabad, for purpose of recruitment to superior posts and services under the Central Government for which M.B.A. degree or equivalent diploma from the recognized University/ Institution is prescribed as the qualification.”

Ministry of HRD, Department of higher education vide letter dated 03.10.2013 clarified as follows:

“... IIM directed to inform you that IIM, Ahmedabad is an autonomous institution of Ministry of Human Resource Development, Govt. of India, engaged in running various Post Graduate Diploma and fellowship programmes which include PGP, PGP-ABM, PGPX, PGP-PMP to say a few.

2. The Institution is managed by a society i.e. IIMA Society, and has complete autonomy in running its programmes. The Institute is run by Board of Governors (BOGs), who represents relevant constituents of multifarious segments of society to take care of the need of developing nation. The objectives of the Institute include creation of skills, and to provide necessary advisory service and develop global linkage for the emergence of the best practices, to name a few. It is one of the top management institutes of India. Policy guidelines were also issued by Ministry of Education's office memorandum, New Delhi-2, 31st August, 1966 on recognition of Technical and Professional Qualification.”

He further pointed out that vide letter dated 30.10.1975 the Association of Indian Universities has recognized the fellow in

management as equivalent to Ph.D. Degree in management. The letter observes as under:-

"I am happy to inform you that the question of the equivalence of Fellow in Management of your Institute in terms of university degree was considered by the Equivalence and the Standing Committees of this Association at their meetings held on 29thSeptember, 1975. The following resolution was adopted:

"Resolved to equate the 'Fellow in Management' of the Indian Institute of Management, Ahmedabad as equivalent to Ph.D. degree in management awarded by Indian Universities.""

2.7 Ld. Counsel also relied on report of AICTE Review Committee, 2015 wherein following has been observed with reference to the appellant:

- *"AICTE does not enjoy a constitutional status.*
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- *Although the AICTE was intended under the statute to be the apex national agency to promote a coordinate and integrated development of technical education at all levels throughout the country, in practice it was never empowered in this behalf. Government itself exercised the powers of the national agency promoting the coordinated and integrated development of technical education in the country. In created autonomous bodies like the IITs, the NITs, the IIMs, the NITTRs, and the like and allotted huge funds to them."*

2.8 Ld. Counsel also pointed out for the purpose of admission to higher studies, the PGDM course of IIM Ahmedabad has been approved by Association of Indian Universities since 03.04.1969. In support of this, he produced a copy of the relevant web page from the website. www.aiu.ac.in.

2.9 Ld. Counsel further pointed out that there are some calculation errors. Moreover he pointed out that they are also entitled to cum duty benefit for valuation of services.

2.10 On the issue of limitation, Ld. Counsel pointed out that earlier notices issued to them for short term courses were dropped. In the said decision, all the facts of instant case were examined. Since that notice was issued invoking extended period of limitation, the present SCN invoking extended period of limitation cannot be sustained in view of decision of Hon'ble Apex Court in the case of Nigam Sugar Factory. He further pointed out that the issue involves interpretation of law and therefore, no malafide can be alleged. Moreover, their institute was being audited every year by revenue and every fact was in the knowledge of revenue. He pointed out that CBEC itself was not clear of the provisions as apparent from various circular and retrospective amendments made upto 2011. He further argued that audit in earlier periods demanded reversal of cenvat credit treating these services as non taxable services.

3. Ld. AR for the Revenue relies on impugned order. He argued that appellants has not specified under which law their long term courses are recognized. He relied on decision of Tribunal in case of ICFAI 2013 (30) STR 273. He argued that the letter of Min. of HRD dated 31.01.2017 only recognizes it from that day and not for past. He further argued that circulars of 1969 grants recognition to IIM are still valid.

4. We have considered rival submissions. In the Finance Act, 2003 the term 'Commercial Training of Coaching' and the term 'Commercial Training and Coaching Centre' was defined as follows:

“(26) “commercial training or coaching” means any training or coaching provided by a commercial training or coaching centre;

(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;”

The service was defined as follows:

“(zcc) to any person, by a commercial training or coaching centre in relation to commercial training or coaching;”

In the Finance Act, 2010, the following explanation was inserted in the sub clause zcc of Section 65(105) of the Finance Act 1994.

“(b) in sub-clause (zcc), the following *Explanation* shall be inserted and shall be deemed to have been inserted with effect from the 1st day of July, 2003, namely :—

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;”

It can be seen that the said explanation was inserted w.e.f. 01.07.2003. Vide Finance Act 2011, the following changes were made in clause 27 of Section 65.

“(3) in clause (27), the portion beginning with the words “but does not include” and ending with the words “time being in force” shall be omitted;”

Simultaneously Notification 33/2011-ST dated 25.04.2011, effective from 01.05.2011, was issued which reads as under:

“In exercise of the power conferred by sub-section (1) of section 93 of the Finance Act, 1994 (32 of 1994), the Central Government on being satisfied that it is necessary in the public interest so to do, hereby exempt,-

- (i) any pre-school coaching and training;

(ii) any coaching or training leading to grant of a certificate or diploma or degree or any educational qualification which is recognised by any law for the time being in force;

when provided by any commercial coaching or training centre from the whole of the service tax leviable thereon under section 66 of the Finance Act, 1994.

2. This notification shall come into force on the 1st day of May, 2011”

Simultaneously vide D.O.F. No.334/3/2011-TRU dated 25.04.2011 was issued which clarified as follows:

Commercial Coaching and Training

6. The revised definition is intended to bring into the tax net all unrecognized education within its ambit irrespective of the fact whether the institute imparting the education is conducting any one or more course recognized by law. Accordingly, an exemption has been given to pre-school education and all education that leads to the award of a qualification recognized by law vide notification No. 33/2011-S.T., dated April 25, 2011.

From the above, it is apparent that till the introduction of Finance Act 2010 by which explanation was inserted in sub clause zzc of Section 65 (105) of the Finance Act, the term 'Commercial Coaching of Training Centre' was deemed to have included only those centres which were rendering the service with profit motive as clarified vide Circular No. 86/4/2006-dated 01.11.2006 (S).

4.1 However with enactment of the Finance Act, 2011 the clause (27) of Section 65 of the Finance Act, the term 'Commercial Training or Coaching Centre' would cover all trainings centers giving training for a consideration irrespective of the profit motive of the center. This change was given retrospective effect from 01.07.2003.

4.2 In the Finance Act 2012, the negative list prescribed under Section 66D of the Finance Act following was included.

“(l) services by way of—

(i) pre-school education and education up to higher secondary school or equivalent;

- (ii) education as a part of a curriculum for obtaining a qualification recognised by any law for the time being in force;
- (iii) education as a part of an approved vocational education course;
- (m) services by way of renting of residential dwelling for use as residence;"

4.3 The Revenue had changed its stand. Earlier only the 'Commercial Concerns' were taxable, however, the commercial nature of training was sought to be made taxable by Circular No. 107/01/2009-SC dated 28.01.2009. This change was later given effect by the amending Finance act, 1994 with Finance Act, 2010. This amendment was given retrospective effect from 01.07.2003 by insertion of explanation in the sub clause zzc of Clause 105 of Section 65.

4.4 In summary as per legal provisions:

(a) prior to 01.05.2011 all trainings given for a consideration by any person covered under the definition of 'commercial training or coaching center' would be liable to service tax. Clause 27 of Section 65 of the Finance Act which define commercial training or coaching center excluded from its purview 'any institute or establishment which issues any certificate or diploma or degree or any educational qualification recognized by law for the time being in force'.

(b) From 01.05.2011 till introduction of the negative list with enactment of Finance Act 2012, the service tax was exempted on service provided by any institute or establishment resulting in grant of a certificate or diploma or degree or any educational qualification recognized by law for the time being. Thus, w.e.f. 01.05.2011 though such institutes or establishment qualified as commercial training or coaching center, Notification 33/11-ST dated 25.04.2011 exempted the coaching or training leading to grant of a certificate or diploma or

degree or any qualification which was recognized by any law for the time being in force.

(c) Introduction of negative list by Finance Act 2012 services excluded services provided by way of education as a part of curriculum for obtaining a qualification recognized by any law for the time being in force from the purview of service tax.

5. In the instant case, all the services on which service tax is demanded are claimed by appellant to be services leading to grant of a qualification recognized by law.

5.1 The SCN has been issued to the appellant alleging that the long term courses organized by the appellant are not approved by AICTE or UGC, nor they have been declared as a deemed university by Central Govt. Consequently it was alleged the educational qualifications granted by them are not recognized by law. Now, we examine the demand show cause notice issued to the appellants. It is seen that in the notice, the only ground raised is that the long term course on which demand has been raised are not recognized by AICTE etc. The law does not provide for recognition by AICTE as a pre-condition of exemption from tax. The language is very clear. Prior to 01.05.2011, institutes providing training leading to qualification 'recognized by law' were outside the purview of tax. After 01.05.2011 'coaching and training' leading to qualifications 'recognized by law' are exempted (upto 01.07.2012) and in the same fall under negative list thereafter. Thus the SCN is not sustainable as there is no allegation that the coaching or training provided by the appellant is not recognize by law. Non recognition by AICTE is not the same as non recognition by law.

5.2 The appellants have claimed that they were involved in providing coaching or training leading to grant of an educational qualification recognized by law during this entire disputed period. Thus, the appellants have claimed that upto 01.05.2011, since they were providing education recognized by law, they do not fall under the definition of 'commercial coaching or training center' and thus no liability of service tax can be fastened on them till 01.05.2011. They have further contended that after 01.05.2011 all the educational training leading to grant of a qualification recognized by law would not be chargeable to service tax. They have contended that in respect of education other than that leading to grant of a qualification recognized by law they are paying service tax.

6. We find that revenue has argued that the letter dated 14.02.2017 of min of HRD does not retrospective recognition. A perusal of the language of the letter clearly shows that it is in the nature of a clarification. It clearly states the provisions of AICTE approval or NBA accreditation does not apply to IIMs.

6.1 Revenue has argued that no evidence has been produced letter dated 31.08.1966 is still valid. It is seen that no evidence has been produced by revenue to prove that the said recognition has been withdrawn. Subsequent communications with Ministry of HRD and with TRU indicate that there is no reason to doubt the letter dated 31.08.1966.

6.2 Ld. Counsel relied on the decision of Tribunal in the case of ITM International (P) Ltd. 2017 (7) GSTL 448 (Tri. Del.) In the said decision, Member (Judicial) had observed as follows:

“12. What is the meaning of recognized by law? The said issue stands discussed by the Hon’ble Delhi High Court in the case of Indian Institute of Aircraft Engineering v. Union of India [34 Taxmann.com 191 (Delhi HC) = [2013 \(30\) S.T.R. 689](#) (Del.)] wherein it was observed that the expression “recognized by law” is a very wide one and stands used by the Legislature in contra distinction to use the expression ‘conferred by law’ or conferred by statute. As such, any degree, diploma or certificate issued by a foreign university or institutes recognized by AIU has to be treated as a certificate ‘recognized by law’ for the time being in force. It is also seen that by Notification No. 43 (F 18-23/92-TD.V/TS-IV), dated 1-3-1995 for 2009-2010 attached as Appendix 6 HRD Ministry, Government of India has declared that the equivalence of degrees/diplomas awarded by AIU will be valid for the purpose of higher education as well as employment in India. As such, in my views, the degree awarded by University of London or University of Allahabad are the degree which are recognized by law for the time being in force and as such, would get included in the exclusion clause of the definition.

13. In fact, I find that the adjudicating authority in the impugned order has also observed that “Although the noticee is affiliated to London School of Economics, all exams are conducted by LSE and certificates and diplomas are being issued by LSE which are recognized by all the national universalities, however as an adjudicator being a subordinate body of the Government of India no powers have been vested in me to expand the scope of the circular and the same is binding on all the field formations”, and has chosen to follow the Board’s circular No. 107/01/2009-S.T., dated 28-1-2009. Apart from the fact that such Board’s circulars are not required to be followed blindly by the adjudicating authority, unless they are in favour of the assessee, I also note that said circular does not clarify the said issue. The same interprets the term “recognized by law for the time being in force” as a degree/diploma/certificate specifically recognized by statutory authorities such as UGC/AICTE. UGC grants recognition to universities and deemed universities under Section 2(f) and Section 3 of the UGC Act, 1956, and is not a body to grant recognition to any certificate or degree or education or any educational qualification. As per Section 2(f) of the University Grants Commission Act, “University means a University established or incorporated by or under a Central Act, a Provincial Act or a State Act and includes any educational institute as may, in consultation with University concerned, be recognized by the Commission in accordance with the regulations made in this behalf under the Act. As such, it is seen that UGC Act does not state anything about recognition of courses or degrees/diplomas. AICTE only recommends technical curriculum and other criteria for technical courses to be offered by technical colleges. As such, the said circular of the Board is not at all applicable to the facts of the present case.”

The said views of Member (Judicial) were approved by Third Member in para 24 which reads as follows.

“24. The next question is whether such a degree or diploma is recognized by law for the time being in force. Here, the reason discussed by Member (Judicial) is proper and sustainable. The UGC and AICTE, etc., are recognizing bodies of a University or an institution. The degree or diploma awarded by these institutions are being considered as recognized by law for the time being in force. In this connection, we note the position has been clarified regarding the scope of the term qualification ‘recognized by any law’ will include such course as are

approved or recognized by any entity established under a Central or a State law, including delegated legislation, for the purpose of granting recognition to any education course.”

He pointed out that the said decision was followed by Tribunal in the case of IILM Under Graduate Business School reported in 2018 (10) GSTL 345. In para 6,7, & 8 of the decision in the case of Under Graduate Business School (supra) following has been observed.

“6. We note that degree or diplomas issued by foreign universities are examined for recognition for further education in India or for employment. It is clear that the courses conducted by the appellant-assessee results in award of degree of B.Sc. (Hon.) by the Bradford University. The said university is an accredited university by the Association of Common Wealth Universities. We also note that education in India is coordinated by several agencies. While the university system falls within the jurisdiction of the UGC, professional institutions are coordinated by different bodies like AITE, MCI, ICMR, ICAR, etc. Another coordinating agency is Association of Indian Universities. All the universities and equivalent institutions are members of AIU. The Ministry of Human Resource Development, Govt. of India, clarified that AIU is entrusted with recognition of degrees or diplomas awarded by accredited universities in India and abroad for the purpose of admission to higher courses at Indian Universities.

7. It is also clear that IGNOU vide Notification dated 22-2-2008 notified that B.Sc. (Hon.), degree in Business and Management Studies of University of Bradford, accredited university in UK, is recognized for purposes of admission to post-graduate programmes University of Delhi by letter dated 11-6-2010 recognized the same course as equivalent to the under-graduate (Hon.) degree of the University of Delhi for the purpose of admission to post-graduate courses by the said university.

8. The Tribunal while examining a similar dispute in the case of M/s. ITM International Pvt. Ltd. vide Final Order dated 11-9-2017 [2017 TIOL 3645 CESTAT, Delhi = [2017 \(7\) G.S.T.L. 448](#) (Tri.)] held that Ministry of HRD vide Notification dated 13-3-1995 stated that the Govt. of India had decided that those foreign qualifications which are recognized/equated by the AIU are treated as recognized for the purpose of employment services under the Central Government. No separate orders for recognition of such foreign qualification is needed to be issued. The Tribunal also noted that UGC had advised Indian students to ascertain information regarding equivalence of the degrees and diplomas awarded by accredited Universities abroad. While examining these facts, the Tribunal in the said case held that the course offered by appellants resulting in the issue of certificate by the University of London, which is treated as equivalent to degree or diploma issued by Universities in India, the appellant was held to be falling outside the scope of definition for “Commercial Training or Coaching Centre”.”

Ld. Counsel also has relied on the decision of Hon’ble High Court of Delhi in case of Indian Institute Aircraft Engineering 2013 (30) STR 689 (Del.). In the case of Indian Institute of Aircraft Engineering (supra), Hon’ble High Court has observed has follows:

“23. The expression ‘recognized by law’ is a very wide one. The legislature has not used the expression “conferred by law” or “conferred by statute”. Thus even if the certificate/degree/diploma/qualification is not the product of a statute but has approval of some kind in ‘law’, would be exempt.

24. “Recognize’ is defined, in the Black’s Law Dictionary, 8th Edition as confirmation of an act done by another person as authorized, formally acknowledging the existence; and, in Concise Oxford Dictionary as acknowledging the existence, validity or legality of.

26. There can be no doubt that such recognition through the Rules framed as aforesaid and through issuance of CAR, is a recognition by law, which is defined in Black’s Law Dictionary, 8th Edition as the aggregate of legislation, judicial precedents and accepted legal principles and the set of rules or principles dealing with a specific area of legal systems. The Rules and the CAR aforesaid dealing with aircrafts, there can be no doubt, are law. The Supreme Court in NarsinghPratap Singh Deo v. State of Orissa - AIR 1964 SC 1793 held that a law generally is a body of rules which have been laid down for determining legal rights and legal obligations which are recognized by Courts. Similarly, in R.S. Nayak v. A.R. Antulay - (1984) 2 SCC 183 it was held that law includes any Ordinance, By-law, Rule, Regulation, Notification, Custom or Usage having force of law. The Rules and CAR aforesaid have been enacted in exercise of legislative power as aforesaid.

27. The reasoning in the impugned Instruction dated 11th May, 2011 that because the qualification awarded by the Institute does not culminate in automatic issuance of license/authorization by the DGCA to certify the repair, maintenance or airworthiness of an aircraft and for which purpose a further examination to be conducted by the DGCA is to be taken, in our view mixes up and confuses, ‘qualification’ with ‘a license to practice on the basis of that qualification’. An educational qualification recognized by law will not cease to be recognized by law merely because for practicing in the field to which the qualification relates, a further examination held by a body regulating that field of practice is to be taken. Immediate instance can be given of the qualification in the field of law. Though by amendment of the recent years, the right to practice law on the basis of the said qualification has been made subject to clearing/passing a Bar Exam to be held by the Bar Council of India, the same does not make the qualification of law not recognized by law. The recognition accorded by the Act, Rules and CAR supra to the Course Completion Certificate issued by the Institutes as the petitioner cannot be withered away or ignored merely because the same does not automatically allow the holder of such qualification to certify the repair, maintenance or airworthiness of an aircraft and for which authorization a further examination to be conducted by the DGCA has to be passed/cleared.”

6.3 Ld. Counsel also relied on the clarification issued by CBEC vide Dof. No. 334/8/2016-TRU dated 29.02.2016.

In CBEC letter dated 29.02.2016 following has been observed:

“7.14 Services provided by the Indian Institutes of Management (IIM) by way of 2 year full time Post Graduate Programme in Management(PGPM) (other than executive development programme), admissions to which are made through Common Admission Test conducted by IIMs, 5 year Integrated Programme in Management and

Fellowship Programme in Management are being exempted from service tax.

7.15 It has been informed by Secretary, Ministry of Human Resource Development (MHRD) vide letter D. O. No. 2-14/2009-TS.V, dated 8th July, 2014 and 5th February, 2014 that MHRD is vested with the power to recognise educational courses [DoPT O.M. dated 8-1-1975], for the purpose of recruitment to posts under Government of India. It has been further stated by MHRD in their above mentioned letters that IIMs have been conducting Post Graduate Programmes in Management and Fellowship Programmes which are equivalent to MBA and Ph.D degrees. It has been reiterated by Secretary, MHRD vide letter D.O. 3/5/2013-TS.V, dated 15-1-2016 that the IIMs have been conducting Post Graduate Programmes in Management and Fellowship Programmes which are equivalent to MBA and Ph.D degrees, respectively, (as also clarified by associations like Association of Indian Universities, Inter-University Board of India etc.). In view of this, the exemption being given to the above programmes of IIMs is clarificatory in nature and in view of the same, liability to pay service tax in respect of the said programmes for the past period will also become infructuous.”

6.4 An analysis of above decision and circular clearly indicates that term 'recognized by law' has to be given a very wide meaning. It is not to be read as 'granted by law'. A qualification may be 'recognized by law' for the purpose of higher education, for the purpose of jobs or for any other purpose. In the instant case, it is clearly established that the long term courses are recognized by Ministry for the purpose of Higher Education, employment etc. The said recognition qualifies them as 'qualifications recognized by law'. The CBEC Letter dated 29.02.2016 also supports this interpretation.

6.5 Revenue has relied on decision of Tribunal in case of ICFAT (Supra). We find that in said case the facts were different and therefore, it is not applicable to this case.

7. In view of the above it is apparent that recognition by law does not mean recognition by AICTE or AIU etc., but it means recognition by government in any significant manners. In the instant case, the courses under dispute have been recognized by government as equivalent to other degree/diploma courses for the purposes of

employment and higher education. Moreover, Ministry of HRD has clearly laid down in their letter dated 31.01.2017 that recognition by AICTE or NBA accreditation is not required by IIMs. These facts have been affirmed by the letter of TRU dated 14.02.2017. Thus we hold that long term course of IIM are courses recognized by law. In view of that the demand does not survive on merits.

8. In so far as the issue of limitation is concerned, we find that the appellants were providing long term courses which were approved by Ministry as well as government for the purpose of higher education and for the purpose of jobs. It is also seen that during the period 2003 to 2010, even revenue was not sure about the nature of service which was intended to be taxed. This is apparent from various circulars issued by revenue and subsequently by retrospective amendment to the definition of commercial training or coaching centres. It is also seen that the appellants are premier organization. The appellant have also registered with service tax department, their account were being audited on annual basis. Earlier revenue has sought reversal of cenvat credit treating this service of long term training courses as exempted service. In this background, we find that there was not suppression and mis-declaration by the appellant. There was not malafide intention whatsoever, thus barred of the demand would also be liable to be set aside on account of limitation.

9. The demands are therefore set aside and appeals allowed.

(Pronounced in the open court on 01.04.2019)

(Raju)
Member (Technical)
Neha

(Ramesh Nair)
Member (Judicial)