Customs, Excise & Service Tax Appellate Tribunal
West Zonal Bench at Ahmedabad

REGIONAL BENCH- COURT NO. 3

Service Tax Appeal No. 350 of 2012 -DB

(Arising out of OIA-COMMR-A-/216/VDR-II/2012 dated 02/04/2012 passed by Commissioner of Commissioner of Central Excise, Customs and Service Tax-VADODARA-II)

Arunakant Jadav ....**Appellant**
C/o, Allied School, Opp J B Modi Park,
Bharti Nagar,
Bharuch, Gujarat

VERSUS

C.C.E. & S.T.-Vadodara-ii ...**Respondent**
1st Floor... Room No.101,
New Central Excise Building,
Vadodara, Gujarat - 390023

APPEARANCE:
Shri Vinay Kansara, Advocate for the Appellant
Shri Ajay Kumar Samota, Superintendent (AR) for the Respondent

CORAM: HON'BLE MEMBER (JUDICIAL), MR. RAMESH NAIR
HON'BLE MEMBER (TECHNICAL), MR. C.L.MAHAR

Final Order No. A/ 12169 /2023

DATE OF HEARING: 07.06.2023
DATE OF DECISION: 27.09.2023

RAMESH NAIR

This appeal is directed against the Order-In-Appeal No. OIA-COMMR-A-/216/VDR-II/2012 dated 02/04/2012 whereby the demand of service tax confirmed against Shri Arunkant Jadav was upheld in respect of service namely Commercial training and Coaching under franchise agreement with M/s. Society for Information Technology Development, Kannur, Kerala.

2. Shri Vinay Kansara, Learned Counsel fairly concedes that on merit the issue stands decided against them in terms of this Tribunal's Final Order No A/11188 -11189/2022 dated 07.10.2022 in the case of Advance Computer Education. However, he submits that in the said case on the identical facts and the issue involved, the demand for extended period was dropped.

Therefore, the same may be followed and set aside the demand for the extended period.

2.1 He further submits that in the present case the assesse is Drushti Computer Centre under Drushti Charitable Trust whereas the show cause notice, Order-In- Original and the Order- In –Appeal was issued against Arunkant Jadav showing him as a proprietor of Drushti Computer Centre and Director of M/s. Drushti Charitable Trust. It is his submission that the assessee is charitable trust and demand should have been made against M/s. Drushti Computer Centre as a charitable trust, hence the demand issued and confirmed against Shri Arunkant Jadav is *ab-initio* illegal. Hence, on this ground the demand will not sustain.

3. Shri Ajay Kumar Smaota, Learned Superintendent (AR) appearing on behalf of the Revenue reiterates the finding of the impugned order.

4. We have carefully considered the submission made by both sides and perused the records. We find that there is no dispute that the show cause notice was issued to Shri Arunkant Jadav for the ready reference the proposal made in show cause notice is reproduced below:-

> "6. Now, therefore, Shri Jadav Arunkant (Prop of M/s Drushti Computer Centre), C/o Allied High School, Opp J B Modi Park, Bharti Nagar, Bharuch are hereby called upon to show cause to the Assistant Commissioner, Central Excise and Customs, Service Tax Cell, 2nd Floor, New Central Excise Building, Aarki Ground, Subhanpura, Vadodara-II as to why:-
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> (i) the service tax amounting to Rs.97,131/- (S Tax Rs.94,485/- + Education cess Rs.1,886/+S & HE cess Rs.760/-), in respect of "Commercial Training or Coaching Service", should not be demanded/recovered from them under proviso to Section 73 of the Finance Act, 1994.
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> (ii) The interest at the appropriate rate should not be demanded/recovered from them under Section 75 of the Finance Act, 1994 on the amount of service tax mentioned at (i) above.

(iii) Penalty should not be imposed upon them under Section 76, 77 and 78 of the Finance Act, 1994.

7. Shri Jadav Arunkant (Prop of M/s Drushti Computer Centre), C/o Allied High School, Opp JB Modi Park, Bharti Nagar, Bharuch are hereby directed to produce at the time of showing cause all the evidence upon which they intend to rely in support of their defense."

4.1 Against the said show cause notice, the operating portion of the Order-In-Original is reproduced below:-

(i) I confirm the demand made vide Show Cause Notice No. STCG-1/Drushti Comp./BCH/SCN-12/09 Dated 15.10.2009 and order the recovery of service tax amount of Rs. 97,131/-(inclusive Education Cess) under the provisions of Section 73 of Finance Act, 1994;

(ii) I order recovery of interest on Rs. 97.131/- as applicable from the due date of payment till the date of actual payment under the provisions of section 75 of Finance Act, 1994.

(iii) I impose penalty of Rupees two hundred for every day, during the period starting from due date till the date of actual payment, or @ 2% of the aforesaid outstanding Service Tax as mentioned in para (i) above, whichever is higher, upon M/s. Shri Jadav Arunkant (Prop. M/s. Drushti Computer Centre/Director, M/s Drushti Charitable Trust) under the provisions of Section 76 of Finance Act, 1994 and the Rules framed thereunder for the contravention of Section 68 of the Finance Act, 1994. However the total amount of penalty payable in terms of this Section shall not exceed the service tax payable as determined at (i) above.

(iv) I impose penalty of Rs. 2,000/- under Section 77 of Finance Act 1994;

(v) I impose penalty of Rs. 97,131/- under Section 78 of Finance Act, 1994.

As per provisions of Section 78 of Finance Act, 1994, if the service tax as determined at (i) above and the interest payable thereon is paid within thirty days from the date of communication of the order, the amount of penalty payable shall be twenty five percent of the imposed penalty amount provided such penalty is also paid within thirty days."

4.2 The Learned Commissioner (Appeals) also upheld the Order-In-Original against Shri Arunkant Jadav. We find that the appellant before the Adjudicating Authority as well as before the Commissioner (Appeals) raised this ground which was recorded and the same is reproduced below:-

Order-In- Original dated 26.10.2010

"10. They have further stated that it has been alleged in the SCN that the notice is using the brand name and trade name of M/S SITD but has not been clarified which brand name or trade name is being used. They further stated that as a matter of fact the notice operates the computer study centre under the name of 'Drushti Computer Centre' and the same is managed by the Charitable Trust viz., 'Drushti Charitable Trust' and the said Trust is working on no profit no loss basis. They further stated that Mr. Arunkant Jadhav is not the proprietor of 'Drushti Computer Centre' as referred in the SCN. They have produced the balance sheet of Drushti Charitable Trust showing the income and expenses of Drushti Computer Centre and stated that since the Drushti charitable Trust is a Public Trust and the same is working on No profit No loss basis, Service Tax cannot be levied."

Order-In- Appeal dated 02.04.2012

"(ii) They operate the computer study centre under the name of 'Drushti Computer Centre' and the same is managed by the Charitable Trust viz. 'Dhrusti Charitable Trust'. Therefore, they were not using the brand name of SITD and hence the benefit of Notification No. 6/2005 was available to them.

(iii) Further, their computer study centre is managed by the Charitable Trust viz. 'Dhrusti Charitable Trust' and the same was working on no profit, no loss basis. Hence, no service tax can be levied on them. Also, Mr. Arunkant Jadhav is not the proprietor of 'Drushti Computer Centre'."

4.3 We find that despite raising this specific issue before the Adjudicating Authority as well as Commissioner (Appeals) no finding was given, Since there is no dispute that the demand was raised , confirmed and upheld against Shri Arunkant Jadav whereas the assesse from which the demand is recoverable is not Arunkant jadav but it is M/s. Drushti Computer Centre under Drushti Charitable Trust, therefore, on this ground alone that the show cause notice was issued to the wrong person the entire proceeding is ab- initio illegal and incorrect.

5. Accordingly, the impugned order is set aside and appeal is allowed.

(Pronounced in the open court on)

RAMESH NAIR
MEMBER (JUDICIAL)

C.L.MAHAR
MEMBER (TECHNICAL)