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

Appeal No. ST/526/2010-DB

[Arising out of OIA No. OIA-180/2010/STC/MM/COMMR-A-/AHD dated 08.07.2010 passed by
C(A) Ahmedabad]

M/s Noble Institute P. Ltd.

Appellant

Vs

C.S.T., Service Tax-Ahmedabad

Respondent

Represented by:

For Appellant: Shri. S.J. Vyas (Advocate)

For Respondent: Shri. S.N. Gohil (A.R.)

CORAM:

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

HON'BLE MR. RAJU, MEMBER (TECHNICAL)

Date of Hearing/Date of Decision:07.12.2018

Final Order No. A/ 12857 /2018

Per: Ramesh Nair

The brief facts of the case are that the appellant are engaged in providing coaching and education training center. During course of scrutiny of the financial records pertaining to the period from April 2002 to March 2006 it was noticed that the appellant short paid the service tax of Rs. 41,147/- and Rs. 927/-. The contention of the department is that the appellant have collected advance amount towards coaching and training service whereas in the middle of the course session the service tax rate was revised from 8% to 10.2%. Accordingly, the differential tax demand @ 2.2% on pro rata basis was demanded for the period after the increase of rate of service tax. Accordingly, the demand was confirmed and penalties under Section 76, 77 & 78 were imposed.

2. Sh. S.J. Vyas Ld. Counsel appearing on behalf of the appellant submits that in view of the judgment given by Hon'ble Rajasthan High Court in the case of Carrier Point vs CCE Jaipur 2018 (3) TMI 1288 (HC) and by this Tribunal in the case of Vigyan Gurukul 2011 (8) TMI 401 (Tri.), it was held that service tax rate is applicable on the date of receipt of the advance therefore, the appellant have correctly paid the service tax at the correct rate i.e. 8%. As regard limitation he submits that since the issue involved is of interpretation of law and the same has been dealt in various judgments and the demand was held as time barred. He placed reliance on the following judgments:

- CAIIT JEE (CAT JEE) 2009 (3) TMI 21
- PT. Education and Training Service Ltd. 2008 (12) TMI 82
- Krishna Coaching Institute 2008 (10) TMI 34 (Tri.)

2.1 As regard demand of Rs. 927/- he is not contesting the same.

3. Sh. S.N. Gohil. Ld. Superintendent (AR) appearing on behalf of the Revenue reiterates the findings of the impugned order.

4. On careful consideration of submission made by both the sides and perusal of the records, we find that since the Ld. Counsel concede that he is not contesting the demand of Rs. 927/-, the same is upheld. As regard the demand of Rs. 41,147/- we find that the case can be decided on limitation itself. The issue involved is interpretation of law that whether the service tax rate is applicable on the date of receipt of advance or on the date of providing the services. Dealing with the same issue on merit, the judgments cited by Ld. Counsel, it was held that the issue being of interpretation of law, longer period of demand cannot be invoked, hence the demand for the extended period was set aside. Following the ratio of the above said decisions, we are of the

view that the demand for extended period and corresponding penalty will not sustain on limitation itself. As regard penalty corresponding to the demand of Rs. 927/-, considering the facts and circumstances of the case we set aside the penalty invoking Section 80 of Finance Act, 1994. The impugned order is modified in above terms. Appeal is partly allowed in above terms without going into the merit of the case.

(Dictated and Pronounced in the open court)

(Raju)
Member (Technical)

(Ramesh Nair)
Member (Judicial)

Neha