CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
ALLAHABAD

REGIONAL BENCH - COURT NO.I

Service Tax Appeal No.70587 of 2019

(Arising out of Order-in-Appeal No.80/ST/Alld/2019 dated 22/04/2019 passed by Commissioner (Appeals) Central Excise & CGST, Lucknow)

M/s School of Information Technology, ...Appellant
(2nd Floor, Super Plaza Complex,
Vidyapeeth Road, Varanasi-221002)

VERSUS

Commissioner of Central Excise &

CGST, Varanasi ....Respondent

(9 M.A. Road, Varanasi-221001)

APPEARANCE:

Shri Vijay Kapoor, Authorized Representative for the Appellant
Shri Santosh Kumar, Authorised Representative for the Respondent

CORAM: HON'BLE MR. P.K. CHOUDHARY, MEMBER (JUDICIAL)
HON'BLE MR. SANJIV SRIVASTAVA, MEMBER (TECHNICAL)

FINAL ORDER NO.70209/2023

DATE OF HEARING : 08 November, 2023
DATE OF DECISION : 08 November, 2023

SANJIV SRIVASTAVA:

This appeal is directed against Order-in-Appeal No.80/ST/Alld/2019 dated 22/04/2019 passed by Commissioner (Appeals) Central Excise & CGST, Lucknow. By the impugned order following has been held:-

"4.9 Thus, I find that in this case the appellant were required to pay Service Tax (including Cesses) of Rs.67,448/- along with interest. Further, so far as equal penalty imposed under Section 78 of the Act, is concerned, I find that the appellant have already paid the confirmed demand of Service Tax of Rs.67,448/- along with interest and reduced penalty (25% of Rs.67,448/-), vide challan

00206 dated 22.02.2019, and thus, have already taken the benefit of the reduced penalty.

4.9.1 However, since the appellant had provided taxable service without obtaining Service Tax registration and had also contravened various statutory provisions of the Act, penalties under Sections 77(1) & 77(2) of the Act are imposable in this case. Thus, after taking into consideration the facts of the case, I hold that a total penalty of Rs. 10,000/- under both Sections 77(1) & 77(2) of the Act, is sufficient in this case."

2.1 Complain was received to the effect that:

(i) the Punjab Technical University, Jalandhar, Punjab (a University established by an Act of State Legislature of Punjab), had appointed Master Companies/ Regional Learning Facilitation Centers across the county, for the purposes of their Distance Education Courses,

(ii) these RLFC's had further appointed Learning Centres (LCs) who had signed Memorandum of Understanding (MoU) with the Punjab Technical University, Jalandhar, Punjab (PTU) on fee sharing basis,

(iii) fees collected by the LCs were handed over to the PTU through RLFCs and the PTU after retaining their share and after deducting TDS, disbursed the balance amount to RLFCs and LCs and

(iv) thus the various courses of the PTU provided by the LCs, were covered under the 'Commercial Training & Coaching Centre Services' taxable under the Finance Act, 1994, on which service tax was required to be paid.

2.2 Acting on the above complain inquiries were initiated against the appellant and it was noticed that during the period from 01.10.2011 to 31.03.2015 appellant has provided Commercial Training and Coaching Center Services without paying service tax of Rs.67,488/- and without obtaining service tax registration.

2.3 A show cause notice dated 19.04.2017 was issued to the appellant asking them to show cause as to why-

(a) *Service Tax amounting to Rs 67,448.00 including education cess and higher secondary education cess, should not be demanded and recovered from them under the provisions of proviso to section 73 (1) of Chapter V of the Finance Act, 1994 along with interest as applicable under Section 75 of the Act, ibid.*

(b) *Penalty should not be imposed upon them under section 77(1) of the Finance Act, 1994 for contravention of section 69 of the Act read with Rule 4 of the Rules.*

(c) *Penalty should not be imposed upon them under section 77(2) of the Finance Act, 1994 for contravention of section 70 of the Act read with Rule 4 of the Rules for each default for not filing the statutory return ST-3 for the period 2011-12 (from Oct'11) to 2015-16.*

(d) *Penalty should not be imposed upon them under section 78 of the Finance Act, 1994 for their willful suppression of facts with intent to evade payment of service tax.*

2.4 This show cause notice was adjudicated by the Assistant Commissioner, holding as follows:

(i) *I, hereby confirm the demand of Rs 67,448/- upon the party M/s School of Information Technology, 2nd Floor, Super Plaza Complex, Vidyapeeth Road, Englishiya Line Crossing, Varanasi under the provisions of Section 73 (2) of the finance Act, 1994, as amended, along with due interest under Section 75 of the Act, ibid.*

(ii) *I also impose a penalty of Rs 67,448/- upon the party under the provisions of Section 78 of the Act. However the party has the option to pay 25% of the penalty payable, provided they pay the service atx, interest and penalties imposed within a period of 30 days of receipt of this order.*

(iii) Also, I impose a penalty of Rs 10,000/- upon the party under the provisions of Section 77(1) of the Act for failure to abide by the provisions of Section 69 of the Act, ibid.

(iv) Further, I also impose a penalty of Rs 10,000/- upon the party under the provisions of Section 77(2) of the Act for failure to abide by the provisions of Section 69 of the Act, ibid.

2.5 Appellant had challenged this order before the Commissioner (Appeal), who by the impugned order dismissed the appeal.

2.6 Aggrieved appellant have filed this appeal.

3.1 We have heard Shri Vijay Kapoor appearing for the appellant and Shri Santosh Kumar learned Authorized Representative appearing for revenue.

4.1 We have considered the impugned orders along with the submissions made in appeal and during the course of argument.

4.2 Prior to 01.07.2012 Commercial Training and Coaching Services have been defined under Section 65 (26), 65 (27) and 65 (105) (zzc) which are reproduced bellow:-

> *“Section 65(26):* "commercial training or coaching" means any training or coaching provided by a commercial training or coaching centre.*
>
> *Section (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 recognized by law for the time being in force*.*
>
> **The underlined words were omitted by the Finance Act, 2011 dated 08.04.2011.*

> <u>*Section 65(105)(zzc):*</u> *"taxable service" means any service provided or to be provided, to any person, by a commercial training or coaching centre in relation to commercial training or coaching; 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 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."*

4.3 From the perusal of the definition as is existed then it is evident that the Institute who fall under this category should be imparting skill, knowledge or lessons or any subject other than sports, with or without issuance of certificate and includes coaching or tutorial classes. In the present case, the institute is acting as a learning centre for Punjab Technical University and as a result of the same a degree or a diploma is awarded to the students for participating in the offered programs. Once that being by the definition as is exists during the relevant period, they are out of this definition as the definition clearly stated that it was with the purpose of issuance of occasional commercial teachings not a degree or a diploma granted by the university. After 01.07.2012 the definition of service was amended and concept of negative list is brought. It is the case of revenue that on 01.07.2012 UGC also issued a circular stating that degree awarded by PTU only be recognized in the state of Punjab. It is clarified on 23.08.2013 by UGC that the degree awarded by PTU would be recognized only in the state of Punjab and as the learning center was located outside Punjab the benefit of award of degree cannot be extended to the appellant who is located in Varanasi.

4.4 Same things have been stated by the Appellate Authority in para 4.3-4.6 which are reproduced bellow:-

"4.3 I also find that in the case of Prof. Yashpal & Anr. Vs. State of Chattisgarh & Ors in Writ Petition (Civil) 19 of 2004, the Hon'ble Supreme Court vide Order dated 11.02.2005, upheld the supremacy of the University Grants Commission Act, 1956 and the Regulations issued by the University Grants Commission under Section 26 of the University Grants Commission Act, 1956 over the State Acts and after taking into consideration the UGC (Establishment of and Maintenance of Standards in Private Universities) Regulations, 2003, (which, inter alia, allows a university established under a State Act to operate within the boundary of the State concerned), struck down Sections 5 and 6 of the Chhattisgarh Niji Kshetra Vishwavidyalaya (Sthapana Aur Viniyaman) Adhiniyam, 2002.

4.4 Since the PTU established by an Act of the State Legislature of Punjab, were eligible to operate within the State of Punjab and not outside, the distance learning courses of the PTU conducted by the appellant, were, therefore, not recognized under the University Grants Commission Act, 1956 and the Regulations issued by the University Grants Commission under Section 26 of the University Grants Commission Act, 1956.

4.4.1 Further, I do not find any merit in the submission of the appellant that the territorial jurisdiction of a university established under the State Act, was notified by the UGC, only w.e.f. 23.08.2013, as any such letter of the UGC would have only clarified the provisions of the University Grants Commission Act, 1956 and the Regulations issued under Section 26 of the University Grants Commission Act, 1956. In fact, the UGC, vide Circular F.No.DEB/QMC/ 2013 dated 23.08.2013, conveyed that the University Grants Commission, in terms of the Public Notice No. F 27-1/2012 (CPP-II) dated 27.06.2013, had notified its policy on *territorial jurisdiction to be followed by all Universities/ Institutes and a University established or incorporated by or under a State Act would operate only within the territorial jurisdiction allotted to it under its Act and in no case beyond the territory of the State of its location.*

4.5 I also find that the Hon'ble Supreme Court in the aforesaid case of Prof. Yashpal & Anr. Vs. State of Chattisgarh & Ors in Writ Petition (Civil) 19 of 2004, after taking into consideration Section 22(3) of the University Grants Commission Act, 1956, held at Para 24, as under:

> *24. Mere conferment of degree is not enough. What is necessary is that the degree should be recognized. It is for this purpose that the right to confer degree has been given under Section 22 of UGC Act only to a University established or incorporated by or under a Central Act, Provincial Act or State Act or an institution deemed to be a University under Section 3 or an institution specially empowered by an Act of Parliament to confer or grant degrees. Sub-section (3) of this Section provides that "degree" means any such degree as may, with the previous approval of the Central Government, be specified in this behalf by the Commission by notification in the Official Gazette. The value and importance of such degrees which are recognized by Government was pointed out by a Constitution Bench in Azeez Basha v. Union of India AIR 1968 SC 662.*

4.6 Thus, when the distance learning courses of the PTU offered by the appellant, were not recognized under the University Grants Commission Act, 1956 and the Regulations made thereunder, the degree/ qualification conferred upon the students on completion of such courses, cannot be considered as recognized. Thus, I find that the appellant were liable to pay Service Tax on the consideration received by them, for carrying out their *aforesaid activity of conducting distance learning courses of the PTU."*

4.5 Above observations made in the impugned order go contrary to the entire scheme of 'distance learning program' operated by various Universities across the country. In distance learning program the university is registered in a particular state and is awarded degree on that place. He prepares for that by going to any centre that being so, once someone deserves a degree or award by a university is goes out from the purview of the scheme by the University. The details in respect of the scheme of Distance Education Program of Punjab Technical University as available on their website are reproduced below:

"Punjab has been one of the most prosperous states in India since independence by way of Green Revolution coupled with white revolution. In order to give the equal momentum to the industrial growth of Punjab educated skilled workforce in sufficient numbers has always been a need of the hour. The Globalization of Indian economy in early 90's further extrapolated the need of such a young innovative workforce.

To address this issue of Technical & professional workforce shortage and to usher into a new era of Industrial Development comparable to International Standards, the Punjab Government constituted Punjab Technical University (IKG-PTU) in 1997 by an Act of State Legislature. The University was entrusted with the responsibility of developing the new generation of technical manpower that can spearhead the industrial development of the State. Punjab Technical University has been founded *to be the grooming ground for the future professionals like Engineers, Managers, Researchers etc.*

As of today, IKG-PTU has a wide network of more than 180 Engineering, Management, Pharmacy, Hotel Management and Architecture Colleges in the State that are approved by All India Council of Technical Education (AICTE).

About Distance Education Programme(DEP)

Distance Education Programmes plays a crucial role in enriching the knowledge base of any society. The need & importance of DEP becomes more relevant in developing countries where sometimes it becomes difficult to impart education to masses in conventional regular mode.

IKG-PTU understands the aforesaid need in India & further it has firmly understood that innovative professional education has to be spread to the general masses. This is how the Distance Education Programme (DEP) of the Punjab Technical University was conceived & University became a pioneer to start Distance Education in the country in its present form. Restricting education to its campuses only will not serve its objective of creating knowledge rich society has been the convincing idea of imparting education in distance mode.

The objective of the programme is to impart affordable, relevant, skill-based & remunerative Professional Education to the masses of the country.

4.6 In context of the above we need to examine the observations made by the Hon'ble Apex Court in case of Prof Yashpal Relied upon by the Commissioner (Appeal) need to be examined. University Grants Commission vide Circular F.No.DEB/QMC/ 2013 dated 23.08.2013, conveyed that the *"University Grants Commission, in terms of the Public Notice No. F 27-1/2012 (CPP-II) dated 27.06.2013, had notified its policy on territorial jurisdiction to be followed by all Universities/ Institutes and a University established or incorporated by or under a State Act would operate only within the territorial jurisdiction allotted to it under its Act and in no case beyond the territory of the State of its location."* In our view the said circular do not in any way states that the degree conferred by the university will not be recognized outside the jurisdiction of the state. It is undisputed that Punjab Technical University has been constituted by the Act of State Legislature. The degree is conferred by the said university on the students who undergo the courses offered by the said university either by attending the residential programs or attending the courses through distance Education Program. The clarification or circular issued by the UGC do not bar the conferment of the degree by Punjab Technical University to the students who undertake the degree programmes offered by the university through distance education programme. In our view once the degree has been conferred by the university duly constituted under a State Act or a Central Act, the institute offering such programmes will, go out of the ambit of the Commercial Coaching and Training Services.

4.7 Delhi bench has in case of Punjab Technical University after examining the Memorandum of Understanding etc has held that such centres are franchisee of the PTU and has held that service tax will be leviable under the category of Franchisee Services. The text of the said decision is reproduced below:

"4. We have considered the contentions of both sides and perused the records. The following issues are involved in this case :-

(i) Classification of service (allegedly) rendered by the appellant under the Finance Act, 1994.

(ii) Valuation of service for levy of Service Tax (in case the service is held to be classifiable as franchise service).

(iii) Whether extended period of limitation is invocable in the facts and circumstances of the case.

(iv) Whether penalty is leviable on the appellant.

A careful scrutiny of the MOU entered into between PTU and RCs/LCs is necessary for deciding classification of service. Therefore, it is facilitative to reproduce a typical MOU and definition of franchise given in Section 65(47) of the Finance Act, 1994, which is done below :-

"MEMORANDUM OF UNDERSTANDING

This MEMORANDUM OF UNDERSTANDING (MOU) is made on 27 day of August 2007 between :

PUNJAB TECHNICAL UNIVERSITY, Ladowali Road, Jalandhar, Punjab, India-144001, through its Dean (DEP) hereinafter referred to as "PTU", which expression shall include its successors and assigns (party of the first part);

AND

M/S. SYMANTEC INFOWAYS, 3789/1 JAGAT JEET NAGAR, LUDHIANA, PUNJAB, THROUGH ITS ARC M/S. VICE, having its office at 2647, HUTSON LINE, NEAR NORTH CAMPUS, DELHI UNIVERSITY, DELHI, India, through its CHAIRMAN, RAJAN CHOPRA.

Hereinafter referred to as PTU's REGIONAL CENTRE, hereinafter further referred to as "RC", which expression shall include its SUCCESSORS and assigns (party of the second part). This MoU is in furtherance to the earlier agreement, duly extended after following due process of law and amended and modified as per requirements of the distance education system of Punjab Technical University. The clauses contained hereinbelow shall override the clauses of the earlier agreement.

WHEREAS the PTU, a University established under the Punjab Technical University Act, 1996, being Act No. 1 of 1997 of the Punjab State Legislature, is engaged, amongst other activities, in importing education under its Distance Education Programme (for short, "DEP") by running its distance education courses through the distant mode regulate by its own Distance Education Council (for short, "DEC") as a part of the "continuing education programmes" as authorised by Section 4(2) of the said Act No. 1 of 1997, through its own approved organs and outreach local centres called the LEARNING CENTRES, hereinafter referred to as the "LCs" duly set up and *established at the chosen places by the PTU under separate letters of authorization issued by PTU, and each individual LC concerned is required to provide the requisite infrastructure for offering the various Courses of Information Technology and Management (for short, I.T.) and non-Information Technology (for short, Non-I.T.) and other related fields, and its said LCs being located at various local places in the respective zones in the country, and the PTU is accordingly engaging its REGIONAL CENTRES for its each zone in the country to be allotted to the RCs for providing logistic support to and effecting supervision of the said LCs on PTU's behalf within the zone allotted to the RC concerned.*

AND WHEREAS the PTU's and its said authorized LCs, being the very organs and authorised outreach local centres of PTU created as aforesaid, are engaged in providing training/education by offering PTU's various approved Distance Education Courses of I.T. & Non-I.T. streams and other related fields, strictly as per the commands and norms of the PTU, under the immediate supervision of their respective RCs in the country, to enable the students of the PTU enrolled with them to get skill based training leading to the award of Degrees/Diplomas of the PTU by the distance Education mode in the concerned courses;

AND WHEREAS the RC herein has been set up as per its own instrument of creation, for the purpose of providing *logistic support and student services to the Learning Centres (LCs) of the PTU within its herein allotted zone comprising the STATE OF RAJASTHAN for the IT, and for supervising the working of the LCs located in its said zone and coordinating with those LCs for ensuring that the LCs provide proper and quality education/training to the students of the PTU strictly as per the commands, norms and standards laid down by the PTU for the skill based learning leading to the award of Degrees/Diplomas by the PTU in the concerned courses/streams through the distance education mode.*

AND WHEREAS this arrangement under the present MOU is not a franchising arrangement in any way but that this a model of public-private partnership for providing effective student support services keeping in mind the present structure of PTU.

AND WHEREAS by this arrangement under the present MOU, no essential, basic and statutory function of the PTU shall be outsourced to the RC.

NOW THEREFORE in consideration of the aforesaid binding premises, and the mutual covenants and promises made hereinafter, the parties hereto, i.e., the PTU and the RC, agree as follows to create a legally binding mutual relationship :

Section 1 : FEES :

1.1 Mode of collection of fees by the LCs : The fees from the students shall be collected by the LCs (located within *the entire allotted zone of RC) only by way of Demand Drafts drawn in the name of the Registrar, Punjab Technical University, Jalandhar, payable at Jalandhar, against proper receipts.*

1.2 Collection of fees from the LCs : The RC will collect the fees from each LC located within its entire allotted zone. The RC will cross-check from the receipt books and the students enrolments records maintained by the LC concerned that all the Demand Drafts in respect of the fees collected from all the students enrolled and studying at the LC concerned have been accounted for and handed over to it. The RC will maintain a MIS as per form of EDP Cell of PTU.

1.3 Transmitting of fees to the PTU : The RC will then send all those Demand Drafts towards fees collected as above from all the LCs located within its allotted zone to the PTU.

1.4 Fees Sharing : Out of the total fees collected from the students and transmitted to the PTU by the RC as above, the fee shall be shared as follows between the PTU, RC and the LC :

(1) Share of the PTU : 28/32.5/37% (>28 <37%)

(2) Share of the RC : 18/20/22% (as per incentive based assessment)

(3) Share of the LC : 45/47.5/50% (as per incentive based assessment)

1.5 Authorization fee : For all the courses offered at the LC as per letter of authorization issued by the PTU, a non-refundable authorization fee shall be paid by the LC to the PTU by way of bank Demand Draft drawn in the name of Registrar, Punjab Technical University, Jalandhar, payable at Jalandhar, as per rates as fixed and as per norms of the PTU in force from time to time.

1.6 Additional Authorization Fee : For starting any other course(s) not initially mentioned in the letter of authorization issued to the LC, separate prior permission of the PTU shall have to be taken by the LC concerned through the RC and, if so permitted by the PTU in its sole discretion, an additional non-refundable authorization fee shall be paid by the LC concerned to the PTU for each additional course at the rates as fixed and as per norms of the PTU, before offering the said course(s) to the students of PTU enrolled thereat.

Section 2 : COURSES to be offered by the LC

2.1 Nomenclature : The nomenclature and list of courses to be offered by the LC shall be as per the letter of authorization issued to the LC by the PTU at the sole discretion of PTU. Each LC may start either IT & Mgt. courses OR non-IT courses as per their core-competence. Each LC shall have to provide separate infrastructure for PTU authorized courses. Any LC desirous of running both IT & Mgt. and non-IT streams shall have to provide separate infrastructure for these streams. It shall be *responsibility of the RC concerned to make these guidelines known to the LC and train them as per rules and ensure strict compliance of the instructions of the University.*

2.2 Venue for conducting the courses : The courses mentioned in para No. 2.1 shall be conducted only at the designated location of the LC, as stipulated in the letter of authorization issued to the LC by the PTU. In no case the location of the LC can be shifted to any other place of its own without the prior written permission of the PTU after verifying the suitability of the said venue. RC shall have to ensure that no LC in their region of operation, either sells, transfers, or closes the operation without properly taken care of the interests of the students enrolled with the University.

2.3 Norms for Infrastructure & Facilities :

The norms for infrastructure and instructional facilities as decided from time to time shall be enforced at each LC by the RC concerned within their zone and deficiency, if any, shall be reported to the University.

Section 3 : EDUCATION AND DELIVERY PROCESS

3.1 List : It shall primarily include the following :-

(1) Curriculum mapping.

(2) Infrastructure planning.

(3) Faculty planning.

(4) Batch launch planning.

(5) Assisting in curbing commercialization of education

(6) Assisting in Monitoring activities

(7) Invitation of registrations/enrolments-Marketing.

(8) Taking registration

(9) Course commencement.

(10) Delivery of the course.

(11) Conducting tests & preparing eligibility list for issuing certificates to the successful students.

(12) Conducting soft skill training to students.

(13) Conducting faculty training within their zone.

(14) Any other matter/item at the sole discretion and with the prior approval of the PTU.

Section 4 : OBLIGATIONS

4.1 OBLIGATIONS OF THE PTU (Party No. 1 herein)

(1) PTU will appoint RC and allot zone of operation under this MOU, and shall monitor the working of the RC, and may at its sole discretion, for the development of the system, restructure zone(s) allotted to the RC or advertise for a new RC where performance of RC is poor or not up to the satisfaction of the University.

(2) PTU will establish and monitor all the LCs in the Zone through the RC.

(3) The LCs will be under the direct & strict control of PTU.

(4) The PTU will approve the syllabus, courseware & examination process.

(5) The students will be on the rolls of PTU.

(6) The prospectus and application form will be approved by PTU.

(7) The PTU will approve the update regularly at regular intervals, the course material through its statutory board of studies from time to time.

(8) The PTU will conduct the examinations, undertake evaluation process, declare results, award degrees/diploma and issue the DMCs.

(9) The question papers would be prepared and supplied by the PTU with secrecy.

(10) The PTU will lay down infra-structural requirements to be adhered to by the LCs.

(11) The PTU will lay down the eligibility criteria as to the qualifications, experience and age of the faculty/staff to be engaged by the LCs for conducting the authorized courses.

(12) The PTU will lay down all the requisite norms which shall be implemented by the LCs to ensure the imparting of quality education by the LCs to the students of PTU enrolled for the authorized courses.

4.2 OBLIGATIONS OF THE REGIONAL CENTRE (RC) (Party No. 2 herein)

(1) The RC will coordinate with the PTU on the one hand and the LCs on the other hand in all matters as required by the PTU from time to time.

(2) The RC will provide logistic support to the PTU and LCs as per norms of PTU, to carry out the objects and obligations under the MOU.

(3) Provide information about each LC to the PTU and assist in its proper monitoring.

(4) In case any LC is closed by PTU then it would the liability of the RC to assist the PTU to ensure that students do not suffer & their studies are conducted alternatively in PTU's another authorized LC within the zone allotted to RC. Before officially closing the center, all student record files and "No Dues" must be submitted by RC to the University.

(5) RC would be responsible for conducting the marketing/advertisement campaigns & strategies in print and electronic media for admissions and brand promotion of the courses of PTU in coordination with PTU.

(6) To assist the PTU in the skill enhancement and quality control of entire system.

(7) To maintain document and data control as well as authentic student data in prescribed formats and to make available such data and MIS to PTU within the stipulated deadlines.

(8) RC will establish a placement assistance cell and liaise with industry through its experts & place students appropriately and maintain data of such placements.

(9) To assist PTU in defending or fighting legal cases within the zone allotted to the RC.

(10) To ensure timely delivery of course material, identity cards, etc. to LCs.

(11) Coordinate efforts for preparing digital contents, CD's Learning Materials, MIS, and LMS, etc., for quality

teaching-learning process within the allotted zone and for the overall development of distance education.

(12) To participate in national and international events pertaining to distance education within and outside the country, in consultation with the PTU.

(13) The RC will assist the PTU for conduct of the examinations as per Rules & Regulations of the PTU and ensure fair practices.

(14) The RC will issue State level advertisements for Admission Notices for the aforesaid courses in the leading Newspapers in coordination with the LCs in consultation with the PTU.

(15) The RC will arrange to provide training for the latest technologies and teaching pedagogy to the staff of the LCs in coordination with the PTU.

(16) The RC will make timely collection from the LCs of the fees paid by the students at the LCs for the allotted courses.

(17) The RC will keep regular and periodic checks on the LCs so as to ensure timely completion of the allotted courses by the LCs.

(18) The RC will conduct all kinds of audits (i.e. Technical audit, Management Information System audit, Library audits, Financial audit, etc.) of the LCs in respect of the PTU's courses run at the LCs.

(19) The RC will frame the marketing strategy and will ensure its implementation by the LCs, in consultation with the PTU.

(20) The working of the RC and LCs shall also be mentioned/reviewed by PTU's Regional Monitoring Committee (RMC).

(21) In addition to review by the RMC, a continuous monitoring mechanism will be in place for assessment by the PTU of the performance of RCs and LCs.

(22) The format of style of any advertisement and hoarding to be placed/put up by the RC and LCs under the RC shall be done with the prior written approval of the PTU. Any advertisement and hoarding to be placed; put up by the RC/LCs should not bring down or cast aspersions on or discredit the PTU, and the decision of the PTU ordering the withdrawal of the advertisement or removal of the hoarding shall be final and binding on the RC/LCs.

(23) The RC may take part actively with the PTU in image building exercises and must organize at least one public function, seminar, counselling session in their region each semester.

(24) The RC agrees to provide expertise for infrastructure, equipments, teaching and training necessary for the course as and when called to do so by the PTU in respect of any LC within the zone allotted to the RC.

(25) The RC shall ensure that the learning imparted to the student covers comprehensively, the entire syllabus, as prescribed by the University within the specified time frame and strictly as per norms laid down or to be laid by the PTU.

(26) The RC will have to perform any other functions or assist the PTU in the proper functioning of the LCs as and when called to so do by PTU.

(27) The RC agrees to pay the necessary fee, i.e., as decided by the PTU for each Region/zone allotted to the RC.

(28) The RC will ensure that all the various LCs under its zone comply strictly with their Obligations to the full satisfaction of the PTU.

(29) The RC will follow, in letter and spirit, all rules and regulations, notifications, guidelines (whether issued to the RC or the LCs) and office orders of the PTU issued from time to time.

4.3 OBLIGATIONS OF LEARNING CENTRES

(1) Each LC shall abide by all the terms and conditions laid down in the letter of its Authorization read with the guidelines issued by the PTU.

(2) To establish and maintain infrastructure as per norms of the PTU.

(3) To maintain a strict academic calendar for timely completion of courses and to arrange for practicals within the center.

(4) To maintain student record files and comprehensive MIS for each PTU student enrolled at the LC.

(5) To follow, in letter and spirit, all rules and regulations, notifications, guidelines and office orders of the PTU issued from time to time.

(6) To enhance student skills and facilitate their placements.

(7) To effectively coordinate with the RC and to work in close cooperation with the RC.

(8) To participate in meetings and training programmes organized by the RC/PTU.

(9) To adhere to the norms & standards of the PTU at all times, as modified from time to time. If the LC is not able to admit students for two consecutive semesters or does not comply with the orders, norms & guidelines of PTU, its authorization shall stand cancelled & withdrawn.

Section 5 : Intellectual Property Rights (IPRs) Issues :

PTU expects the RCs and LCs to have legal software and use course material with due regard to IPRs (Copyrights, Trademarks, Patents, etc.) of the owners/authors thereof. The PTU will not be bound and legally responsible for any sort of legal consequences arising out of any violation of the IPRs by the RCs and LCs concerned.

Section 6 : Authorization:

6.1 In supersession of the existing Agreement : The authorization under this MOU, as per provisions of the earlier Agreement (by way of extension of the existing *tenure of the existing RC and by re-allotment of its zone of operation, under the present policy of PTU for renewing the existing terms of the existing RCs after due assessment of their performance) shall be in supersession of the existing MOU of the RC with the PTU.*

6.2 Duration : The validity of authorization period by way of extension of the existing tenure of RC and by re-allotment of its zone of operation on the terms and conditions as laid down in this MOU under the aforesaid present policy of PTU, shall be as stipulated under this MOU.

Section 7 : Validity of authorization period and the re-allotted zone :

This authorization as RC (being granted under the present policy of PTU for renewing the existing terms of the existing RCs after due performance appraisal as per ____________ approved by BOG) is presently valid for a term of 2.5 year(s) from the date of signing this MOU, with a provision of extension based on performance after proper evaluation, for the re-allotted zone falling in Zone "T".

There shall be mid-term appraisal after 1.25 years and further extension or otherwise shall be decided.

Section 8 : Withdrawal Clause :

Any RC may withdraw from this MOU by giving a prior notice of withdrawal of three months to the PTU, which shall require acceptance by the PTU.

Section 9 : Exit clause and provision of Natural Justice :

The RC agrees that the PTU reserves the right to terminate the present authorization to the RC or to modify/restrict/terminates its zone of operation created under Section 7 of this MOU, by following the process of natural justice. It is clearly stipulated herein, and accepted and agreed to by the RC, that in case of any breach by the RC of any of the foregoing terms and conditions contained in this MOU, or for its unsatisfactory performance, or for non-performance, or for abandonment of the project or for any other reason or issue to be felt or determined by the PTU, a show cause notice will be served to the RC concerned with details of deficiencies and a written reply shall be sought within 15 days. The reply to the show cause notice shall then be considered by the DEP Council, and if required, the RC concerned shall be asked to defend their case before the DEP Council. The matter with the recommendations of the DEP Council shall then be sent to the BOG of PTU and further decision regarding any punitive action may include modification/restriction/termination of the zone of RC under this MOU, as per decision of the BOG and such decision shall be final and binding on the RC. The decision so taken may be represented against by the concerned RC and the Board may consider appointing a committee to reconsider the decision after giving an opportunity of being heard in the matter to the RC concerned. The decision so taken shall be final.

Section 10 : Stipulation.

10.1 For MOU : Two sets of this MOU shall be typed, each one on a separate non-judicial paper of the requisite value meant for agreements. This MOU is to be signed by both the parties and their respective witnesses, in the manner as shown hereunder.

After execution of both the original sets (i.e., the each set containing the MOU & the Affidavit) prepared as stipulated in Section 10 above, one original thereof has been kept for record by each of the two parties hereto.

IN WITNESS WHEREOF both the parties hereto set their respective hands to this writing (MOU) at this day and year mentioned above."

Section 65(47) of the Finance Act, 1994 reads as under :-

"Franchise" means an agreement by which the franchisee is granted representational right to sell or manufacture goods or to provide service or undertake any process identified with franchisor, whether or not a trade mark, service mark, trade name or logo or any such symbol, as the case may be, is involved;"

As evident from the MOU, appellant approved and monitored all LCs. It approved the syllabus, courses and examination process. Students are on the rolls of the appellant and the prospectus and the application form is approved by the appellant. The examination, evaluation, declaration of results and award of degrees are also the obligations of the appellant. The appellant lays down *infrastructural requirements to be adhered to by LCs. It also lays down the eligibility criteria for the faculty and staff to be engaged by LCs and the requisite norms to be implemented by LCs to ensure impart of quality education by LCs to the students enrolled by the appellant in authorised courses. Correspondingly, obligations of LCs, as mentioned in MOU reproduced above, clearly show that they have to abide by the terms and conditions specified in the MOU. The agreement clearly provides that LCs are duly authorised by the appellant to engage in providing training/education by offering appellant's various approved distance education courses of IT and non-IT streams and other related fields, strictly as per the commands and norms of the appellant to enable the students of the appellant enrolled with them to get skill based training leading to the award of degrees/diplomas of the appellant by the distance education mode in the concerned courses. The appellant ensures that LCs provide proper and quality education to the students of the appellant in accordance with the norms and standards laid down by the appellant for the skill based learning leading to the award of degrees/diplomas by the appellant in the concerned courses/streams through the distance education mode.*

From the foregoing there remains no doubt that LCs were authorised to take students by claiming and making it clear that the education they were providing was on behalf of the appellant. They were allowed even to advertise to that *effect. It was because LCs were representing the appellant with regard to providing education, that the MOU cast strict obligations on LCs to ensure that the quality of education remained as per the standards of the appellant. It also comes out from the MOU that RCs framed marketing strategies to be implemented by LCs in consultation with the appellant. As per the MOU, the format and style of any advertisement or hoarding to be placed by RCs/LCs had to be done with the prior written approval of the appellant lest these bring down or cast aspersions on or discredit the appellant. Owing to the fact that LCs represented the appellant with regard to providing education, MOU laid down strict requirements of infrastructure, processes, qualifications of staff, etc. as elaborated in the MOU. Though the MOU states that it is not a franchise arrangement and is a model of public-private partnership for deciding classification of the service rendered thereunder, we have to see the nature, terms and conditions thereof; it is immaterial as to what nomenclature is assigned to it. Thus, notwithstanding that the MOU states that it is not a franchise agreement, the aforesaid analysis leaves no doubt that it satisfies all ingredients of franchise as defined in Section 65(47) of the Finance Act, 1994 inasmuch as LCs were granted representational rights to provide service and to undertake various activities identified with the appellant. The contention of the appellant that franchise has to involve* *trade mark, service mark, trade name or logo or any other such symbol is untenable as the definition of franchise given in Section 65(47) ibid quoted earlier clearly states that these may not be involved. In the case of Global Transgene Ltd. v. CCE, ST, Aurangabad [2013 (32) S.T.R. 86 (Tri.-Mum.)], CESTAT has held that "admittedly in a franchisee transaction, the franchisee loses his individual identity and represent the identity of the franchisor to the outside world, as in the case of "McDonald" the customers are not concerned with who owns the 'McDonald's restaurant (franchisee). The customers identify it with 'McDonald (the franchisor)". In the present case also, a student is hardly much concerned as to which LC he joins because each LC provides education as per the norms and requirements laid down by the appellant and he gets a degree of and from the appellant. Ld. advocate referred to the judgment of Kerala High Court in the cases of Speed and Safe Courier Service v. Commissioner (supra) and Franch Express Network (supra).*

In the case of Speed and Safe Couriers Service (supra), the Hon'ble Kerala High Court found that double assessment of charges was made and held that there was no statutory provision to tax the same service charges twice. Thus, the ratio of this judgment has no relevance to the present case. In the case of Franch Express Network (supra) cited by the appellant, it was found that the agreement indicated that representational right was not *granted (which is not the case in respect of the MOU under consideration). In case of Bonanza Speed Couriers (supra), cited by the appellant, CESTAT interpreted the definition of franchise as it existed prior to 16-6-2005 and therefore the said judgement is not germane to the issue in the present case. On the other hand, we find that the facts in the case of DPS v. CST, Delhi (supra), where CESTAT held that there was rendition of franchise service by DPS, are pretty similar to facts in the present case inasmuch as in that case also, the appellant provided concepts of business operation to the franchisee including know-how, method of operation, managerial expertise, etc. Further, the definition of "franchise" as applicable to the present case is much wider than the definition which existed during the period covered by the DPS case (supra), making the ratio of the DPS judgment squarely applicable (and more) to the present case. Indeed, the MOU in question is so clear an example of "franchise" as defined in Section 65(47) ibid that any further elaboration on this point will be an exercise in over-kill.*

5. Coming to the aspect of valuation of service, we find force in the contention of the appellant that the entire fee collected by LCs in the name of the appellant cannot be treated as assessable value of franchise service. We note that out of the total fee collected by the appellant through LCs, a part was given back to LCs. Obviously, the part of the collection which was given back by the appellant to LCs *cannot form part of the assessable value for the purpose of taxability. As per Section 67 ibid, the value of taxable service is the gross amount charged by the service provider for such service and gross amount will be only the amount, which remained with the appellant after payments to LCs. However, the contention of the ld. advocate that only authorisation fee and additional authorisation fee should be taken as a consideration for the service rendered is untenable, because the valuation for the impugned service is to be done in accordance with the provisions of Section 67 ibid, which, to repeal, in effect, states that the value of the taxable service will be the gross amount charged for the service and the gross amount charged by the appellant for the service rendered has to be equal to the amount collected by the appellant from LCs minus the amount paid by it to LCs. It is pertinent to mention that the amount paid by the appellant to RCs would not be excludible from the assessable value, because the RCs were created by the appellant to ensure that LCs acted as per the MOU, the franchise service was properly monitored and suitably promoted and for certain other purposes as mentioned in MOU. Thus, the amount paid to RCs by the appellant was an expense at the hands of the appellant in connection of provision of franchise service. For the sake of elucidation, for example, the appellant could as well have employed its own persons for doing what RCs did in which case the expenses incurred in doing so would not be* *deductible from the assessable value. Thus, the amount paid by the appellant to RCs is not excludible from the assessable value.*

6. The appellant has contended that the extended period in this case is not invocable as there was no suppression or wilful misstatement. It stated that the figures asked for were also given within a month's time. We find that in the show cause notice, the invocation of the extended period is proposed in the following terms :-

"13. The Noticee during the relevant periods neither got themselves registered with the Department nor paid the appropriate Service Tax on the services provided by them. The Noticee also did not file the returns prescribed as per law with the Department. Thus they have suppressed the fact of providing the taxable service from the Department with an intent to evade payment of Service Tax and have violated the provisions of Sections 66, 68, 69 and 70 of the Act read with Rules 4, 5, 6 and 7 of the Rules. By these acts of omission and commission, they have rendered themselves liable to penal action under Sections 76, 77 & 78 of the Act.

14. The extended period of limitation of five years as provided under proviso to Section 73(1) is clearly invokable in this case as the Noticee had suppressed the fact of providing the taxable service from the Department with an intent to evade payment of Service Tax and had the department not gathered the information on their own *about the services provided by the Noticee, this huge evasion of Service Tax would not have come to the notice of the Department as the Noticee neither got themselves registered with the Department nor filed the prescribed returns during the relevant period as required under the law."*

The appellant was established under Punjab Technical University Act, 1996 and started distance education programme through LCs in terms of the guidelines issued by University Grants Commission (UGC). The details of such programme were advertised and also displayed on its website. It entered into MOUs with almost 1,000 LCs. In these circumstances, the allegation that it suppressed this activity or indulged in wilful misstatement is simply preposterous. In the case of Continental Foundation Jt. Venture v. CCE, Chandigarh-I [2007 (216) E.L.T. 177 (S.C.)], the Supreme Court observed that "an incorrect statement cannot be equated with a wilful misstatement - There cannot be suppression or misstatement of fact, which is not wilful and yet constitute a permissible ground for purpose of proviso to Section 11A ibid - Misstatement of fact must be wilful". Also in the case of Nestle India Ltd. v. CCE, Chandigarh [2009 (235) E.L.T. 577 (S.C.)], the Supreme Court held that "extended period invokable only when there is positive act other than mere inaction or failure on the part of manufacturer and there must be conscious or deliberate withholding of information by *manufacturer". While there are bland statements made in the show cause notice alleging wilful misstatement/suppression of facts, there is no evidence adduced in support thereof. Non-payment of Service Tax/non-obtaining of registration by themselves can hardly ever sustain charge of wilful misstatement or suppression of facts inasmuch as in case of a bona fide belief regarding non-taxability, no assessee would file returns or obtain registration. In case of CCE v. Chemphar Drugs Liniments [2002-TIOL-266-SC-CX = 1989 (40) E.L.T. 276 (S.C.)], the Supreme Court held that "something positive other than mere inaction or failure on the assessee's part or conscious withholding of information when assessee knew otherwise is required for invoking extended period". Thus, we are of the view that the allegation of suppression of facts cannot be sustained in the given circumstances. Consequently, penalty under Section 78 ibid is not imposable."*

From the above decision it is evident that the transactions between the appellant have been held to be taxable under the category of Franchisee Services. If the service tax is now levied under the category of Commercial Coaching and Training Centre Service again the same will amount to double taxation under two different categories. Thus the decision holding that the services provided by the appellant are classifiable under the category of Commercial

Coaching and Training Center Services is contrary to the above decision of Delhi Bench.

4.7 Tribunal in the case of M/s Bitcom Services Pvt. Ltd. Vs CCE, Delhi Final Order No.53238 of 2018 dated 05.11.2018 whereby the case of the same university was also under consideration rejected the arguments made by the revenue to classify these services under the category of Commercial Coaching and Training Center Service. In para 8 & 9 of the said decision Tribunal observed as follows:-

"8. After hearing both the parties on this issue and pursing the record we observe that the demand has been confirmed for want of evidence establishing that the income for the impugned period was received for and on behalf of IGNOU and PTU. But we observe that due accreditation of appellants from both these universities is very much on record. There is no dispute that IGNOU and PTU both are constituted under law. In view of this apparent fact the definition of Commercial Training & Coaching Services and the discussion, as above, is relevant.

9. The bare perusal makes it clear that any institute or establishment issuing any educational qualification which is recognized by law the same is exempted from the tax limits. The expression "recognized by law, no doubt, is a very wide expression as comparing to expression "Conferred by law" or "Conferred by Statue". To be covered under the term "recognized by law" the certificate/ degree/ diploma/ qualification is only required to be the product of a statue and the institute does not except it is sufficient that Institute has approval/ accreditation of some Institute constituted under statute. The Hon'ble Supreme Court in the case of Narsingh Pratap Singh Deo Vs. State of Orissa AIR 1964 (SC) 1793 and in another case R.S. Nayak Vs. A.R. Antulay 1984 (2) SCC 183 the Apex Court has held that law includes any ordinance, by law, rule, *regulation, notification, custom or usage having force of law. Relying thereupon, we are of the opinion that since IGNOU and PTU are constituted in exercise of the legislative power the accreditation by them in favour of the appellant is very much covered under the terms "recognized by law". In view of this entire discussion even notification no 10 dated 26.06.2003 need not to looked into. We are therefore of the opinion that the demand confirmed by the authorities below under this head is also liable to be set aside."*

4.8 Explaining the amendments made in law by the Finance Act, 2011 by deleting certain part of definition under of Commercial Coaching and Training Center, Joint Secretary (TRU-II) vide his letter dated 28.02.2011 clarified as follows:

"3.3 Commercial Training or Coaching Service [section 65 (105) (zzc)]: The scope of the service is proposed to be expanded to include all coaching and training that is not recognized by law irrespective of whether the institute is providing any other course(s) recognized by law."

We have already held that the degree provided by the Punjab Technical University is recognized by the law and hence the deletion of the said phrase will not have any impact on findings recorded by us to the effect that the prior to introduction of Negative List, the services provided by the appellant are not covered by the definition of Commercial Training or Coaching Services.

4.9 Post introduction of the Negative list of services concept for taxation of services by Finance Act, 2012, we observe that the services of the appellant are covered under the negative list, and hence cannot be subject to tax. The Education Guide, issued while introduction of levy of Service Tax by prescribing negative list also clarified as follows:

"4.12.1 What is the meaning of 'education as a part of curriculum for obtaining a qualification recognized by law'?

It means that only such educational services are in the negative list as are related to delivery of education as 'a *part' of the curriculum that has been prescribed for obtaining a qualification prescribed by law. It is important to understand that to be in the negative list the service should be delivered as part of curriculum. Conduct of degree courses by colleges, universities or institutions which lead grant of qualifications recognized by law would be covered. Training given by private coaching institutes would not be covered as such training does not lead to grant of a recognized qualification."*

4.9 In view of the above discussions, we do not find any merits in the impugned order and the same is set aside.

5.1 Appeal is allowed with consequential relief to the appellant.

(Dictated and pronounced in open court)

Sd/-
(P.K. CHOUDHARY)
MEMBER (JUDICIAL)

Sd/-
(SANJIV SRIVASTAVA)
MEMBER (TECHNICAL)

Akp