IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH : ALLAHABAD
COURT No. I

APPEAL Nos. ST/533 & 571/2012-CU[DB]

(Arising out of Order-in-Original No.25/COMMR./NOIDA/2011-12 dated 31/01/2012 passed by Commissioner of Customs Central Excise & Service Tax, Noida)

M/s National Institute of Banking Studies & Corporate Management
(In Appeal No. ST/533/2012)
&

Commissioner of Customs, Central Excise & Service Tax, Noida
(In Appeal No. ST/571/2012) **Appellants**

Vs.

Commissioner of Customs, Central Excise & Service Tax, Noida
&

M/s National Institute of Banking Studies & Corporate Management **Respondents**

Appearance:

Shri Vivek Gupta (C.A.) for Assessee
Shri Pawan Kumar Singh (Supdt.) AR for Revenue

CORAM:

Hon'ble Mrs. Archana Wadhwa, Member (Judicial)
Hon'ble Mr. Anil G. Shakkarwar, Member (Technical)

Date of Hearing : 21/06/2018
Date of Decision & Pronouncement : 17/07/2018

FINAL ORDER NOs. - **71538-71539/2018**

Per: Archana Wadhwa

The appellant is a society promoted jointly by four different Banks like Oriental Bank of Commerce, Punjab

& Sind Bank, The Jammu & Kashmir Bank Ltd. and The National Bank Ltd., with the purpose of providing training to the employees of these member Banks. The appellant is also providing training to employees of other Banks in the field of banking which enables the employees to efficiently handle the business of the Banks of which the trainees are staff. The benefit of the training accrues to the Banks which send their employees for training and pay to the appellant. The appellant is a Non-Profit Organization registered under Section 12A of Income Tax Act, 1961.

2. By entertaining a view that the appellant is providing services under the category of “Commercial Coaching or Training”, as defined in Section 65(26) and Section 65(27) and made taxable under Section 65(105) (zzc), Revenue initiated proceedings against the appellant by way of issuance of show cause notice dated 21/10/2010 resulting in passing of present impugned order by the Commissioner confirming the demand of duty of Rs.99,33,882/- along with confirmation of interest and imposition of penalty of identical amount under Section 78 of Finance Act, 1994. In addition

penalty of Rs.10,000/- was also imposed under Section 77 of the Finance Act, 1994.

3. During adjudication the appellant assailed the proposal to confirm the demand on the ground that service tax was not being paid by them on the charges received from the member Banks as also from non member Banks on the ground that the appellant is not a commercial concern and is a Non-Profit Organization; that the purpose of training was not commerce; that the programmes conducted by the appellant were in the nature of continuing education not of Commercial Coaching or Training. The demand was also assailed on the point of limitation. However, the said pleas were not accepted and the impugned order stands passed.

4. Learned advocate appearing for the appellant before us fairly agrees that the issue on merit stands decided against the appellant in the case of Great Lakes Institute of Management Ltd. 2014 (48) taxman.com 11 (New Delhi-CESTAT) (L.B.), holding that irrespective of the fact that the appellant was not a commercial concern, the taxability would arise if the institute is engaged in activity of imparting skill, knowledge or lessons on any subject or field irrespective of the nomenclature of the

institute or its incorporation by or registered under any law or the course contents, teaching, methodology, course duration or otherwise.

However, learned advocate submits that the period involved in the appeal is from April, 2005 to March, 2010 whereas the show cause notice stands issued on 21/10/2010 and as such the major part of the demand was barred by limitation. Arguing further he submits that during the relevant period there were decisions in favour of the assessee and it is only subsequently when the Hon'ble Apex Court in the case of CST vs. Great Lakes Institute Management Ltd. - 2010 (29) STT 11 (SC), set aside the order of the Tribunal and remanded the matter back to the Tribunal for *de novo* consideration in the light of explanation inserted by Finance Act, 2010, the matter was taken up by Larger Bench and the decision was arrived at making services as taxable. In such a scenario submits the learned advocate that extended period would not be invokable inasmuch as there can be no *mala fide* on the part of assessee.

5. After hearing learned A.R. appearing for the Revenue, we agree with the contention of the learned advocate. Admittedly during relevant period the decisions

on the issue was in favour of the assessee and the subsequent setting aside of Tribunal order in the case of Great Lakes Institute Management Ltd. by the Hon'ble Supreme Court and the declaration of law by the Larger Bench, reversed the earlier views of the Tribunal. In such a scenario appellant cannot be held guilty of any suppression or mis-statement, and not discharging his service tax liabilities, in which case the longer period would not be available to the Revenue.

6. Accordingly, we hold that the demand raised beyond the normal period would be barred by limitation. Further for same reasons, the penalty imposed on the appellant requires to be set aside.

7. However, we note that a part of the demand fall within the normal period of limitation. Learned advocate has submitted that inasmuch as there was mutuality of interest on the ground of having provided the training to its member Banks, the service cannot be held taxable in the light of law declared by the Hon'ble Jharkhand High Court in the case of Ranchi Club Ltd. 2012-TIOL-1031-HC-Jharkhand-ST as also in the light of Sports Club Gujarat Ltd. decision 2013-TIOL-528-HC-AHM-ST.

Reference also stands placed on the Tribunal decision in FICCI vs. CST 2014 (5) TMI 183 CESTAT-New Delhi.

8. As we have already observed that the issue stands decided against the assessee by the Larger Bench decision of the Tribunal in the above referred decision of Great Lakes Institute of Management Ltd. 2014 (48) taxman.com 11 (New Delhi-CESTAT) (L.B.), and as the decision of the Larger Bench is binding on the Division Bench, we cannot proceed ahead to decide the correctness or otherwise of the said decision of the Larger Bench. As such, we are not inclined to pass an order on merits by considering the said submission of the learned advocate as the judicial hierarchy system require us to follow law declared by the Larger Bench, unless the same is set aside by any Higher Court.

9. In view of foregoing, the demand falling behind the normal period of limitation is set aside along with setting aside of penalty and the matter is remanded to the Original Adjudicating Authority for re-quantification of the demand falling within the limitation period.

10. Revenue has also filed appeal against the same very order of Commissioner vide which he has extended the

benefit of cum-duty to the appellant. Revenue's only contention is that inasmuch as the appellant had not paid the tax on the full value recovered, the benefit of cum-tax should not have been extended to the appellant.

We find that the said issue is settled by cateana of judgments that while calculating duty demand, the benefit of cum-duty has to be extended to the assessee. We find no merits in the above contention of the Revenue and accordingly reject their appeal.

11. Both the appeals are disposed of in above manner.

(Pronounced in Court on 17/07/2018)

Sd/-	**Sd/-**
(Anil G. Shakkarwar)	**(Archana Wadhwa)**
Member (Technical)	**Member (Judicial)**

Lks