

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

APPEAL Nos.ST/70672-70674/2016-CU[DB]

(Arising out of Order-in-Appeal No. 227-229/ST/APPL-LKO/LKO/2016 dated 22/03/2016 passed by Commissioner of Central Excise & Customs (Appeals), Lucknow)

Shri Yatindra Tiwari Proprietor,

Shri Trayambak Tiwari Proprietor &

Shri Mayank Tiwari Proprietor,

Appellants

Vs.

Commissioner of Central Excise & S.T., Lucknow

Respondent

Appearance:

Shri Dharmendra Srivastava, C.A.

for Appellants

Shri Rajeev Ranjan, Additional Commissioner (AR),

for Respondent

CORAM:

Hon'ble Smt. Archana Wadhwa, Member (Judicial)

Hon'ble Mr. Anil G. Shakkarwar, Member (Technical)

Date of Hearing : 11/12/2018

Date of Decision : 11/12/2018

FINAL ORDER NOs-72895-72897 / 2018

Per: Archana Wadhwa

As the issue involved in all the three appeals is identical, we proceed to decide all the appeals by a single order.

2. After hearing the appellant's duly represented by Learned Chartered Accountant Shri Dharmendra Srivastava we find that all the appellants were running an educational coaching and tutorial centre and were

duly registered with the Department for the said services under the category of “Commercial Training & Coaching Services”. The tax liability was being discharged by them by filing ST-3 returns etc.

3. As a result of investigations, conducted at the end of each of the appellants, revenue entertained a view that the appellants were suppressing the value of taxable services and as such the service tax came to be evaded by them. Accordingly, proceedings were initiated by way of issuance of separate show cause notices, all dated 30.05.2012 raising demand of service tax for the period 2006-07 to 2010-11.

4. Vide their impugned orders, lower authorities confirmed the demand along with confirmation of interest and imposition of penalties.

5. Learned Advocate appearing for all the appellants fairly agrees that there have been suppression of the value of the services and as such the appellants are not aggrieved either with the confirmation of demand or with imposition of penalties. However, the only plea being raised by him is that the demand stands raised and confirmed even beyond the period of 5 years. Section 73 of Finance Act, 1944 provides a normal period of one year and in case of any malafide, the maximum period of 5

years for raising the demand. There is no provision under the said Act to raise the demand beyond the period of 5 years. As such, he submits that the demand, which pertains to the period beyond 5 years is required to be set aside.

He fairly agrees that the said issue was not raised before the lower authorities. Inasmuch as, the impugned orders are ex parte orders and the appellant could not file any reply and could not attend personal hearing. However, he submits that the issue being a legal issue and all the facts being available on records, they may be permitted to raise the same.

6. Learned A.R. appearing for revenue fairly agrees that demand is for the period from 2006-07 to 2010-11 whereas the show cause notice stands issued on 30.05.2012. As such the demand travels beyond the period of 5 years.

7. On going through the provisions of Section 73 of the Finance Act, 1994 we note that the same provides for raising of demand only up to 5 years, even if in case of any suppression on the part of the assessee. In the absence of any authority to raise the demand beyond the period of 5 years, we agree with the contentions of the learned advocate on the said count and hold that the

demand could have been raised and confirmed only for the period of 5 years from the relevant date. As such, we set aside the impugned orders and remand the matter to the Original Adjudicating Authority for quantification of the demand falling within the period of 5 years from the date of issuance of show cause notice. The reduction in demand quantum would also have bearing on the quantum of penalty which issue would also be considered and re-adjudicated by the Original Adjudicating Authority.

8. All the appeals are disposed of accordingly.

(Dictated in Court)

(Anil G. Shakkarwar)
Member (Technical)

(Archana Wadhwa)
Member (Judicial)

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