CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
ALLAHABAD

REGIONAL BENCH - COURT No. I

Service Tax Appeal No. 70119 of 2019-[SM]

(Arising out of Order-in-Appeal No. 42/ST/Alld/2018 dated 12/01/2018 passed by Commissioner of Central Excise & CGST (Appeals), Allahabad)

M/s Vishwanath Educations Pvt. Ltd. **.....Appellant**

(B 27/97, Dharm Sangh Shiksha Mandal,

2nd Floor Durgakund Varanasi)

VERSUS

Commissioner of Central Excise, **....Respondent**

(Allahabad)

APPEARANCE:

Shri Manoj Kumar, Chartered Accountant for the Appellant
Shri Shiv Pratap Singh, Deputy Commissioner, Authorised Representative for the Respondent

CORAM: HON'BLE SMT. ARCHANA WADHWA, MEMBER (JUDICIAL)

FINAL ORDER NO-71518 / 2019

DATE OF HEARING : 28 June, 2019
DATE OF PRONOUNCEMENT : 07 August, 2019

PER: ARCHANA WADHWA

After hearing both the sides duly represented by Shri Manoj Kumar learned Chartered Accountant appearing for appellant and Shri Shiv Pratap Singh, learned Authorised Representative appearing for Revenue, I find that the appellants were engaged in providing "Commercial Training or Coaching Center Service" under the franchisee of M/s Aakash Institute. They have paid service tax on the franchisee fee as also on the sharing fee to M/s Aakash Institute, who has deposited the same with the revenue, there is no dispute about it.

2. It is seen that a show cause notice was issued to the appellant on 17.02.2014 raising demand of service tax of Rs.21,14,729/-, for the period from 2009-10 to 2011-12, under the category of "Commercial Training or Coaching Center Service". During the course of adjudication, as also before Appellate Authority, the appellant took various stands like availability of Cenvat credit of service tax paid on various input services and neutralization of demand against the same; the quantification of the service tax on the complete fee without granting the benefit of the sale of the study material; the demand being barred by limitation etc. The said pleas of the appellant were not appreciated by the lower authorities, who confirmed the demand along with confirmation of interest and imposition of penalties.

3. After going through the impugned order, I find that admittedly the appellant was entitled to the Cenvat credit of the service tax paid on the franchisee services as also to the benefit of exclusion of the cost of the sale material. However, I find that the appeal can be disposed of on the point of limitation alone.

The period involved in the present appeal is from 2009-10 to 2011-12 whereas show cause notice stands issued on 17.02.2014, by invoking the longer period of limitation. While Commissioner (Appeals) has upheld the invocation of longer period of limitation but he set aside the penalty imposed by the Original Adjudicating Authority by observing as under:-

> *"4.5.1 It is observed that (i) show cause notice dated 17.02.2014 itself mentions that M/s Aakash Educational Services Limited, New Delhi had charged Service Tax from the appellant on each invoice whether it pertained to the payments received from the appellant against their share of fee/franchisee service or study materials and the appellant did not pay Service Tax, as the appellant were having sufficient cenvat credit balance in their books, (ii) Such cenvat credit available with the appellant, is not under dispute, (iii) the Service Tax liability of the appellant has been worked out on the basis of the transactions available in the specified records and (iv) the appellant did not debit their cenvat credit account, to pay their Service Tax liability, and did not file ST-3 returns for the impugned period, accordingly. Thus, I find that there was no mala fide intent on the part of the appellant, to evade payment of Service Tax, which can justify the imposition of penalties and as such, the penalties imposed in this case, are harsh & unjustified. Since the appellant have shown the responsible cause for the failure on their part, to pay the Service Tax, I extend them the benefit of Section 80 of the Act and set aside the penalties imposed under Sections 77 & 78 of the Act."*

4. As is seen from above, Appellate Authority, for the purpose of setting aside the penalty, has concluded that there was no mala-fide intention on the part of the appellant to evade payment of service tax. Accordingly, he has extended the benefit of Section 80 of the Finance Act, 1994. The said part of the order of Commissioner (Appeals) does not stand challenged by the revenue.

5. It is well settled that for invocation of the extended period of limitation, revenue is required to show *mala-fide* on the part of the assessee i.e. that the tax was not being paid by way of suppression, misstatement etc. with an intent to evade payment of duty. Once such intent has been held to be missing by Commissioner (Appeals) for the purpose of imposition of penalty, I really fail to understand as to how the same *mala-fide* intent can be upheld for the purpose of invocation of extended period. As such, I am of the view that the extended period was not available to the revenue in the absence of any *mala-fide* on the part of the assessee.

6. Accordingly, the impugned order stands set aside on this short ground itself and appeal is allowed with consequential relief to the appellant.

(Pronounced in open court on-07 August, 2019)

(Archana Wadhwa)
Member (Judicial)

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