

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL  
ALLAHABAD**

REGIONAL BENCH - COURT NO.II

**Service Tax Appeal No.51761 of 2015**

(Arising out of Order-In-Original No. 23-COMMR-LKO-ST-2014-15, dated - 11/11/2014 passed by Commissioner, Central Excise & Service Tax, Lucknow)

**U P Electronics Corporation Ltd,** .....Appellant  
(10 Ashok Marg, Lucknow, Uttar Pradesh 226001)

*VERSUS*

**Commissioner, Central Excise & Service Tax, Lucknow**  
....Respondent

(7A, Ashok Marg, Lucknow)

**AND**

**Service Tax Appeal No.50699 of 2015**

(Arising out of Order-in-Original No. 23-COMMR-LKO-ST-2014-15, dated - 11/11/2014 passed by Commissioner, Central Excise & Service Tax, Lucknow)

**Commissioner, Central Excise & Service Tax, Lucknow**  
.....Appellant  
(7A, Ashok Marg, Lucknow)

*VERSUS*

**U P Electronics Corporation Ltd,** ....Respondent  
(10 Ashok Marg, Lucknow, Uttar Pradesh 226001)

**APPEARANCE:**

Shri Shiv Kumar Yadav, Clerk for the Assessee  
Ms. Chitra Srivastava, Authorized Representative for the Revenue

**CORAM: HON'BLE MR. SANJIV SRIVASTAVA, MEMBER (TECHNICAL)  
HON'BLE MR. ANGAD PRASAD, MEMBER (JUDICIAL)**

**FINAL ORDER NO.70793-70794/2025**

DATE OF HEARING : 15.07.2025  
DATE OF DECISION : 13.11.2025

**SANJIV SRIVASTAVA:**

These appeals are directed against the Order-in-Original No. 23-COMMR-LKO-ST-2014-15, dated -11/11/2014 passed by Commissioner, Central Excise & Service Tax, Lucknow. By the impugned order following has been held:-

**"ORDER**

*I confirm the demand of Rs. 73,83,913/- (Rupees seventy three lakh A eighty three thousand nine hundred thirteen only) against M/s. U. P. Marg. Electronics Corporation Ltd. under Section 73(1) of the Finance Act, 1994 along with interest leviable under Section 75 of the Act ibid.*

*I waive all the penalties proposed in the show cause notice under section 80 of the Finance Act, 1994"*

2.1 The Appellant is a state government undertaking and are engaged in providing 'Management, Maintenance or Repair Services' in terms of Section 65(64) read with 65(105)(zzg), which are chargeable to Service Tax under Finance Act, 1994 and are registered with the Department.

2.2 During the course of scrutiny of records of the Appellant's it was observed that they were also providing following services for which they had neither obtained registration nor complied with any other provision of law:-

(i) Commercial Coaching and Training Service in terms of Section 65(26) read with Section 65(105)(zzc) of the Finance Act, 1994.

(ii) Online Information Retrieval Service in terms of Section 65(75) read with 65(105)(zh) of the Finance Act, 1994.

(iii) Business Auxiliary Service in terms of Section 65(19) read with Section 65 (105)(zzb) of the Finance Act, 1994.

2.3 On each of the service it was observed that the Appellant had short paid Service Tax as detailed in tables below:-

**(i) Commercial Coaching and Training Service**

Year	Rate of Service Tax	Computer Education Fees	Corporate Computer Training Fee	Total Amount received	Service Tax due
2010-11	10.30	303400	3,71,61,200	3,74,64,600	3858853.80

**(ii) Online Information Retrieval Service**

Year	Rate of Service Tax	E-Tender digital signature fees/ charges received	Website development charges	Software etc. Networking /installation charges/ peripherals etc. received	Implementation of customized software through manpower	Total amount received	Service tax due
2010- 11	10.3%	4915400	4058392	25306120	3127828	37407740	3852997.22

**(iii) Business Auxiliary Service**

Year	Rate of Service Tax	Job / Other charges received	Job / Other Charges received (AMC)	Total Amount received	Service Tax due
2010-11	10.30	3982787	217250	4200037	432603.81

2.4 Thus Appellant during the period from 2010-11 short paid Service Tax as detailed in the table below:-

Year	Name of Taxable Services	Total Gross Amount received	Rate of service tax	Service Tax due
2010-11	Commercial Coaching Service	37464600	10.30%	38,58,854
	On-line Information Retrieval Service	37407740	10.30%	38,52,997
	Business Auxiliary Service	4200037	10.30%	4,32,604
Total		<b>7,90,72,377</b>		<b>81,44,455</b>

2.5 Alleging the Appellant who were required to self-assess the Service Tax liability and by showing incorrect value of taxable value in ST-3 Returns and failed to deposit correct Service Tax have thus willfully suppressed material information with intent to evade payment of Service Tax.

2.6 Show Cause Notice dated 19.10.2011 was issued to the Appellant asking them to show cause as to why:-

- 1) Service Tax total amounting to Rs. 81,44,455/- (Eighty One Lacs Forty Four Thousand Four Hundred Fifty Five Only) not paid by them should not be demanded and recovered from them under Section 73 (1) of the Finance Act, 1994,

- 2) Interest at appropriate rate should not be charged and recovered from them under Section 75 of Finance Act, 1994 for non-payment of service tax by due dates,
- 3) Penalty should not be imposed upon them under Section 76 of the Finance Act, 1994 for non-payment of service tax on consideration received for providing services.
- 4) The Penalty should not be imposed upon them under Section 78 of the Finance Act, 1994 for violation of section 73(1) of the Act for the reason of suppressing the facts and wilful misstatement to evade the payment of service tax.

2.7 The Show Cause Notice has been adjudicated as per the impugned order referred in Para 1 above.

2.8 Aggrieved by the impugned order Appellant and Revenue both have filed these appeals.

3.1 This matter has been listed for hearing on number of times i.e. 18.03.2024, 24.06.2024, 29.07.2024, 18.09.2024, 13.11.2024, 09.12.2024, 05.03.2025 & 15.07.2025. When the matter was listed on 15.07.2025, none appeared for the Appellant. Shri Shiv Kumar Yadav, Clerk for the Counsel appeared and requested for an adjournment. Since the matter has been adjourned for more than the maximum prescribed number of times as per proviso to Section 35C (1A) of the Central Excise Act, 1944 matter has been taken up for consideration after hearing the Revenue. On 15.07.2025 following order was passed:-

### **"ORDER SHEET**

*When the matter was called, Shri Shiv Kumar Yadav, Clerk of the counsel for the Respondent appeared on behalf the counsel and requested for an adjournment.*

*2. Since the issue is in very narrow compass and matter has been adjourned more than 3 times and on the last*

*occasion matter was adjourned by way of last chance, we are deciding the issue on merits.*

3. *Heard learned Authorized Representative for the Revenue and perused the appeal records.*

4. **Order Reserved.** *Both sides are at liberty to file written submission."*

3.2 Written submissions have been filed by Shri Sanjay Kumar, Advocate on 25.08.2025.

3.3 Heard learned Authorized Representative for the Revenue who reiterates the findings recorded in the impugned order and also the grounds taken in the appeal filed by the Revenue.

4.1 We have considered the impugned order alongwith the submissions made in the appeal and during the course of argument.

4.2 We find that in the present case the demand has been issued within the normal period of limitation to the Appellant within one year from the date of filing of **the appeal**. Appellant has in his written submissions stated as follows:-

<b>Financial year</b>	<b>Period</b>	<b>Date of filing</b>	<b>Date up to which SCN could be served</b>	<b>Remarks</b>
<b>2010-11</b>	April to September	20.10.2010	19.10.2011	Within time
	October to March	20.04.2011	19.04.2012	

4.3 The demand has been confirmed against the Appellant in respect of the three services mentioned above observing the demand have been reduced from what have been raised in the Show Cause Notice after allowing the benefit of cum tax as per Section 67(2) of the Finance Act. The relevant paragraphs of the impugned order are reproduced as under:-

*"The noticee also submits that the Department has treated the gross amount received by the noticee as the value of taxable service, without making any adjustments for service tax included in it. The manner of computation of tax adopted by the Department is incorrect. Therefore, gross amount*

*received by the noticee is to be considered as cum-tax and demand should be calculated accordingly. I find that principle contained in S 67(2) of the Act has not been followed while quantifying the demand in the show cause notice. There is no evidence in the notice that the noticee had collected tax or any other amount separately. Keeping in view the provision contained in S 67(2) of the Act and case laws relied by the noticee the demand of tax is re quantified as under-*

Year	Name of Taxable	Total Gross Amount received	Taxable value Per S. 67(2)	Rate of service tax	Service Tax due
1	2	3	4	5	6
2010-11	Commercial Coaching Service	37464600	33966093	10.30%	3498508
	On-line Retrieval Service	37407740	33914542	10.30%	3493198
	Business Auxiliary Service	4200037	3807831	10.30%	392207
	<b>Total</b>	<b>7,90,72,377</b>	<b>7,16,88,466</b>		<b>73,83,913</b>

*I am inclined to appreciate the fact that the noticee is a UP Government undertaking and transaction on which the tax demand sustained was captured in the books of account. I find reasonable ground to wave penalty u/s 80 of the Act. I refrain from imposing penalty U/s 76 and 78."*

4.4 The basic question which is for consideration in the present case is whether the Service Tax will be leviable on these 03 activities. The major portion of the demand has been made in respect of 'Commercial Coaching & Training Services' and Online Information, Data Access and Retrieval Services. In respect of 'Commercial Coaching & Training Services' impugned order records as follows:-

*"On careful consideration of the above submissions I find that the noticee has not been able to disclose under what law "A" level and "O" level diploma certificate is recognized. The noticee has submitted that their institute in Agra is accredited by the DOEACC society to conduct computer training to students which enable them to appear in the "A" level and "O" level certificate examinations. DOEACC society*

*is an organization under the control of the Ministry of Communication and Information Technology, Government of India. In my view mere control of the Ministry of Communication and Information Technology, Government of India over DOEACC society will not suffice to come to a conclusion that "A" level and "O" level certificate is recognized by law. I have seen the copy of the accreditation certificate granted by the DOEACC society to the Agra institute of the noticee submitted with the defence reply. The noticee has submitted copy of DOEACC accreditation certificates in respect of "O" level computer course only. I do not find anything in the certificate to infer that A" level and "O" level certificate course is recognized by law. It has been the assertion of the noticee that "A" level and "O" level certificate of DOEACC society is recognized by law so the onus to establish the fact was on the noticee. The noticee has failed to establish their assertions...*

*The case law in ST. Antony's Educational and Charitable Society 2006 (1) S.F.R. 137 (Ker.) is about extending the benefit of exclusion clause of section 65 (27) of Finance Act, 1994, regarding institute or training centre providing any educational qualification recognized by law for the time being in force to parallel institution also.*

*Actually in that case hon'ble Kerala high Court has followed their decision in Malappuram District Parallel College Association 2006(002)STR 0321 KER where the issue was discrimination in extending the benefit of exclusion clause of section 65 (27) of Finance Act, 1994 to the Parallel institutions. I find that the hon'ble court has not held that A" level and "O" level certificate is recognized by law. The case laws do not help the noticee.*

*3.18 The noticee goes on to submit that during the relevant period the noticee has received Rs. 3,71,61,200/- from the various government departments working under the*

*Ministry of Uttar Pradesh government such as UP Scheduled Caste Finance & Development Corporation, Social Welfare Department, District Urban Development Authority, Zila Siksha Evam Prashikshan Sansthan, Training & Employment Department etc. has proposed service tax demand amounting to Rs. 38,27,604/- on such receipt In the impugned SCN, department on the ground that noticee is engaged in provision of Commercial Training and Coaching Service' to such government departments.*

*It may be pointed out by the noticee that Section 65(105)(zxc) of the Act provides that 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. In this regard, Section 65(27) of the Act, 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 pre-school 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 noticee received the work order from government departments detailing the course/content and duration of the computer training program to be implemented and managed by the noticee for such department. It may be pointed out that fees for such computer training program is already been fixed by the Ministry of Information Technology & Electronic Department of Uttar Pradesh Government. Then, the noticee arranges the business associate who undertakes the computer training for such*

*government department as per the ems laid in the work order.*

*Noticee being the wholly owned government company, working under the administrative control of Information Technology & Electronic Department (IT Department) of Uttar Pradesh Government. The IT department issues directions from time to time which are to be mandatorily followed by the Noticee.*

*In this regard, for increasing the awareness and computer knowledge to the government employees of various departments, government had issued a Government Order (GO) No. 1157/78-IT-2001 dated 13.08.2001. As per such GO noticee along other institute has to implement the computer training program for various government departments. Further, noticee has no sufficient infrastructure to, carry such activity, thus, computer training cannot be undertaken by noticee itself. Thus, government vide a GO No. 1220/78-IT-2002 dated 11.07.2002 has authorized various commercial institutions (herein after referred as 'Business Associates' for the sake of brevity) approved by noticee for imparting the computer training to the government employees.*

*Further, it may also be pointed out that in the invoices raised by the noticee to government department the noticee duly mentions that the training program is undertaken by the Business Associate. Then, the noticee after retaining the consideration for its activities (i.e. 15% of total consideration) remits the remaining amount to its business associates. Therefore, in the present case, the prime objective and intention of the transaction entered by the noticee and government bodies is to implement and manage the computer training program more efficiently as per the requirement. Thus, the noticee is only acting as a nodal agency which monitors and manages the computer training*

*program executed by business associates on behalf of government departments. The noticee itself is not providing any computer training to the trainees of the government bodies. Therefore, the noticee can never be classified as 'Commercial Training or Coaching Centre'.*

*The noticee imparts necessary skills and knowledge through its business associates to unskilled individuals in the field of computers. It may be noted that computer training implemented by the noticee certainly helps in getting job in Industry & Commerce.*

*In this respect the case of the noticee is that they are not engaged in the rendering, the service of Commercial Training and Coaching Service' to various government departments of Uttar Pradesh such as UP Scheduled Caste Finance & Development Corporation, Social Welfare Department, District Urban Development Authority, Zala Siksha Evam Prashikshan Sansthan, Training & Employment Department etc. for the reason in the invoices raised by the noticee to government department the noticee duly mentions that the training program is undertaken by the Business Associate.*

*Thereafter, the noticee after retaining the consideration for its activities (i.e. 15% of 2 total consideration) remits the remaining amount to its business associates. Therefore, in the present case, the prime objective and intention of the transaction entered by the noticee and government bodies is to implement and manage the computer training program more efficiently as per the requirement. Thus, the noticee is only acting as a nodal agency which monitors and manages the computer training program executed by business associates on behalf of government departments. The noticee itself is not providing any computer training to the trainees of the government bodies. Therefore, the noticee can never be classified as 'Commercial Training or Coaching*

*Centre' business associates. The submission of the noticee is not convincing. The government of UP gave work order to the noticee who in turn raise invoices as per agreed rates, the payment comes to the noticee and after retaining a percentage they pass on the rest to their business associates. In this facts and circumstances by all implication the noticee is service provider. It is not going to make any difference if the services are provided at the premises of the business associates of the noticee. They have acted as Commercial Training or Coaching Centre for the purposes of S.65(105)(zxc) of the Finance Act1994. It is also not the case of the noticee that any part of the tax liability was discharged by their business associates.*

*The further plea of the noticee is that they are entrusted with this work to impart computer education to the unemployed youth belonging to weaker section of society, the women etc. It may be stated here that where a service is provided for discharge of the sovereign or statutory functions of the State then such services rendered would be non-taxable. This is also the case of the notice that even if it is presumed that they are rendering service it could not be taxable for the reason that their activity is neither, coaching nor training to attract tax in the category of 'Commercial Training and Coaching Service'. They are imparting computer education and that is beyond the scope of 'Commercial Training and Coaching Service' The notice has vehemently relied on CBEC circulars, directive principles of state policy of the constitution of India, and a number of case laws along with Collins dictionary. This is also the submission of the notice that training provided to the employees of the Government of Uttar Pradesh is on job training hence it will not be covered under the category of Commercial Training and Coaching Service'.*

*I do not find any force in the above submissions. The noticee is not a department of the government of Uttar Pradesh but an undertaking, a corporate body created under statute. Their function cannot be equated with sovereign or statutory function of the state. The noticee charges commercial consideration from the departments of government of Uttar Pradesh for the services rendered by them. The noticee has sought to take cover of nodal agency to establish that they are doing any sovereign or statutory function while imparting training to the Government employees and women and members of weaker sections of society. No where I find, in the GOs produced by the noticee that they are nodal agency of the government for imparting education and providing employment to women and members of weaker sections of society. Rather the noticee is appointed as nodal agency for computerization and for promoting and developing information technology in governance of 'Uttar Pradesh. The function allocated to the noticee in my view is neither statutory nor sovereign nor is it enjoined in the directive principles of state policy of the constitution of India. The case laws relied by the noticee on this point is distinguishable in the facts and circumstances of the case. Similarly the contention of the noticee that they have imparted education and not training or coaching is also not acceptable. In my view education is a very broad term, which includes in its scope the development of personality. The courses undertaken by the noticee on their own admission is designed to develop computer skill among the trainees who are government employees or women and members of weaker sections of society. Here it is even not the case of that they were providing coaching for the said "A" or 'O' level courses which I have found not recognized by law.. Training develops skill whereas education is development of personality. Likewise on job training to the government employees help the case of revenue to categorize the service under Commercial Training and Coaching Service'*

*The noticee has further submitted to seek exemption from service tax amounting to Rs.38,026/- under notification no.12/2003-ST dated 20.6.03 that they have supplied course material in form of books to the trainees. Their submission is that the noticee is making sale of books to the students/trainees under the computer training program. Further, the noticee did not register itself with the Sales Tax/Vat department as sale of books is exempt from the levy of the Sales tax/VAT. In order to substantiate contention, the noticee has submitted Copy of the Purchase bills of books from various sellers and CA certificate, certifying the aforesaid contention.*

*The submission of the noticee that they have sold the books to the trainees is without evidence. There is no mention in the terms and conditions of the work orders produced by the noticee that they would be selling course books also while providing the service. Though I agree with the case law SHILPA COLOR LAB Versus COMMISSIONER OF C. EX., CALICUT 2007 (5) S.T.R. 423 (Tri. Bang.) relied by the noticee that in terms of the Notification12/2003-ST, the value of the goods and materials sold by the Service provider to the recipient of the service is to be excluded for the purpose of calculating the Service Tax. However, the Notification is subject to the condition that there should be a documentary proof specifically indicating the value of the said goods and materials. In the absence of documentary proof, a service provider may claim deduction in an arbitrary manner. In order to avoid that the above condition has been stipulated, it should be borne in mind that there is no requirement that in each and every invoice, such values of goods and materials should be indicated. But I am not inclined to extend the benefit of notification 12/2003-ST on the basis of bald claim that the books were supplied to the trainees. The noticee has given no evidence to sustain their claim. The case laws are distinguishable here. The benefit of*

*exemption under notification 12/2003-ST is not available to the notice.*

4.5 We find that the services sought to be taxed under this category can be grouped in two categories namely,-

- Training provided to the government employees, in respect of the user applications developed by the appellant;
- Training course organized by the appellant to impart computer education to the unemployed youth belonging to weaker section of society, the women etc, leading to "A" level and "O" level diploma certificate of DOEACC

4.6 In respect of the training programmes organized by the Appellant either directly or through their business associates, for the government employees to impart computer education and skills, the same cannot be said to be a commercial training and coaching services, as the appellant who is a state government undertaking undertakes these training programmes as mandated by the State government for its employees. There is nothing to establish that the appellant was providing these services to the government employees for a consideration, but was providing these services to the state government departments and was raising the bills on the said department.

4.7 In respect of the services provided by the appellant to impart computer education to the unemployed youth belonging to weaker section of society, the women etc, leading to "A" level and "O" level diploma certificate of DOEACC, we do not find any merits in the impugned order. The coaching training provided by the appellant would definitely lead to enhancement of the skills of the person and would provide them better opportunity for seeking employment. In case of Frankfinn Aviation Services Pvt. Ltd. [2017 (5) G.S.T.L. 154 (Tri. - Del.)] following was held:

"8. The Id. AR submitted that the appellant-assessee did not impart any training which will enable the participant to have gainful self-employment. In order to consider the appellant-assessee as "Vocational Training Institute" it is necessary that the trainees should have opportunity to seek employment or to undertake self-employment. In the present case the courses offered by the appellant-assessee do not provide the opportunity to the trainees to undertake 'self-employment' directly after the training or coaching. These courses provide opportunities of employment only. Regarding payments made to Edexcel, U.K., the Id. AR submitted that the appellant-assessee is conducting courses, which result in issue of Diploma by Edexcel. The standard of course and the required skill levels are all pre-determined in terms of the agreement entered into by the assessee-appellant with Edexcel. The appellant-assessee is using the name of Edexcel and the original authority correctly held them as representing Edexcel in India. On reimbursable expenditure the Id. AR submitted that the expenses incurred by the appellant-assessee is very much includible in the tax value for the purpose of tax liability under franchisee service. These are essential expenditure to provide the service.

9. We have heard both the sides and perused the appeal records. We take up the first issue regarding liability of the appellant-assessee to pay service tax under the category of "commercial coaching and training". Admittedly the appellant-assessee is providing commercial coaching and training. The dispute is relating to their eligibility to the exemption under Notification No. 24/2004-S.T. The said Notification provides exemption to taxable services provided in relation to commercial training or coaching by a 'Vocational Training Institute'.

"(i) "Vocational training institute" means a commercial training or coaching centre which provides vocational training or coaching that impart skills to enable the trainee

*to seek employment or undertake self-employment, directly after such training or coaching;"*

*10. In the first proceedings (impugned Order-in-Original No. 36-38/S.T., dated 30-11-2010), the Original authority held that as the courses offered by the appellant-assessee do not provide for skills to the trainees to engage themselves in self-employment. As such, the exemption under the said Notification will not be available. We find that the said reasoning is without any legal basis and is totally fallacious. As seen from the terms of the Notification, it is clear that the training or coaching should impart skills to enable the trainee to seek employment or undertake self-employment. Admittedly, in the present case there is no dispute regarding the ability of the trainees to seek employment in the fields in which they have obtained training as per the courses offered by the appellant-assessee. The original authority concluded that since the courses did not enable the trainee to undertake self-employment, the Institute cannot be called "Vocational Training Institute". First of all, we are not able to appreciate as to how such conclusion was drawn by the original authority. There is no basis to give a summary conclusion that the trainees on completion of such courses cannot undertake self-employment. Even otherwise, it is not necessary to have both the criteria of the employment and self-employment to be fulfilled in this regard. We note that in the later order, the original authority concluded that the appellant-assessee are eligible for exemption under the said Notification. It was recorded as below :-*

*"5.3 Various courses offered by M/s. FASPL, in respect of aviation, hospitality and travel management, help in developing the skills of a trainee to enable him/her to seek direct employment or engage in self-employment in a specific area of travel and hospitality industry. For example after completing the course for air hostesses, a trainee could seek employment in that specific field of the airlines*

*industry. I further find that the training programs under aviation, hospitality and travel management improve the chances of a trainee to get employment in that specific industry over a generalist (say common graduates); and also impart skills to go for self-employment, on account of skills acquired by the trainees. Such training course is commonly known and understood as a vocational course in trade. For availing of the exemption granted under the notification, a 'commercial training or coaching institute', has to satisfy the condition, as per the definition of Vocational Training Institute given in the above said notification and accordingly should provide training to impart skills which enables the trainees to seek 'employment', or to undertake 'self-employment'. In the present case, after going through the documents available on record, I am of considered opinion that the courses offered by M/s. FASPL do provide the opportunity to the trainees to undertake 'self-employment' directly after the training or coaching and also provide opportunities of 'self-employment'. Further, any person undertaking such a training or coaching does it only with a view to get an employment or to persue self-employment in a particular field, say in aviation industry. There cannot be any other purpose for joining such a course. Naturally, they join such courses only because it is provided by an institute which equip them with skills and develop ability in them to persue a career in the desired field. It is nobody's case that all trainees who pass out from such an institute would necessarily get employment or be successful in being self-employed in the chosen field, but definitely such persons who undergo such training or coaching have an 'advantage' or 'edge' over those who have not. It is this 'edge' or 'advance', which to my mind is what is referred to as "imparting skill to enable the trainee to seek employment or undertake self-employment..." in Notification No. 24/2004-S.T., dated 10-9-2004. Since this*

*notification operated during the entire period of demand under SCN dated 20-10-2010, the benefit of the exemption contained therein cannot be denied."*

11. We are in general agreement with the above observation of the original authority. However, we note that the ability to seek employment after the completion of a training course in terms of the explanation provided in the said Notification itself is sufficient for claiming the exemption. In the present case, we find that the courses offered by the appellant-assessee are covered by the scope of Notification No. 24/2004-S.T. and the exemption provided therein cannot be denied.

12. On the second issue relating to the liability of the appellant-assessee on the payments made to Edexcel, U.K., we note that M/s. Edexcel awarded BTEC Higher National Certificate recognized in more than 110 countries. The agreement entered into between the appellant-assessee and Edexcel has been highlighted by the Id. Counsel for the appellant-assessee, to reiterate the point that there is no representational right granted to the appellant-assessee. We have perused the agreement dated 1-2-2006. The Original authority relied on clause 7 of the agreement. It stipulates that Edexcel shall provide training exclusively to Frankfinn. For any Edexcel qualification in India aimed at target sector clauses 11, 12, 13 and 14 of the agreement stipulate that Edexcel shall send a member of staff from U.K. to deliver staff development for BTEC programmes; shall provide training material to the faculty members to be trained and also provide technical assistance in completing Centre approval and qualification approval forms required to be completed for becoming a BTEC Centre and to offer BTEC qualification. It is also stipulated that Edexcel shall provide prompt advisory support through nominated staff in U.K. to assist the centre in the operation and management of the BTEC qualifications. The agreement further stipulates that appellant-assessee shall comply with all the terms and conditions laid down in the BTEC International

*approval (BIA) Form and as agreed with Edexcel from time to time. Clause 49 of the agreement permits the appellant-assessee to use Edexcel name or trade-mark for the purpose of promoting its Diploma and Edexcel's BTEC - HNC to call the course "Frankfinn's one year Diploma in aviation, hospitality and travel management along with BTEC higher national certificate by Edexcel, U.K." and will be permitted to mention the exclusive arrangement in India.*

*13. We have noted that M/s. Edexcel are themselves not having any coaching package or course of training in this field. They are basically an entity to certify vocational qualification and is an awarding body for BTEC National and Higher National Diplomas and Certificates. In order to become a BTEC Centre, Edexcel provides for staff development, to prepare the Institute to the required level of quality standards. The agreement entered into by the appellant-assessee with Edexcel is only for that purpose. We are not able to discern any representational right offered to the appellant-assessee in the scope of the said agreement. The Original Authority also did not elaborate what type of representational right has been granted by Edexcel to the appellant-assessee in terms of the said agreement. Basically, Edexcel provides for an international recognition of the courses offered by the appellant-assessee, for which certain standards are to be met. On completion of the training course, the Diploma Certificate is issued to the participant by Edexcel. The appellant-assessee is paying certain consideration for the recognition of their institute and for award of Diploma Certificate by Edexcel. There is no representational right in the scheme of things, as laid down in the agreement.*

*15. On the third issue regarding the liability of the appellant-assessee to pay service tax on various reimbursable expenditures incurred by them, we note that the reliance placed by the original authority on the provisions of Rule 5(1) of Service Tax Valuation Rules, 2006 is not legally sustainable.*

*We note that the Hon'ble Delhi High Court had struck down the said Rule as ultra vires of Sections 66 and 67 of Finance Act, 1994 in the case of Intercontinental Consultants and Technocrats Pvt. Ltd. (supra). Here we also note that the agreement entered into by the appellant-assessee with various franchisees clearly provides for reimbursement of various expenses, on actual basis, by the franchisee to the appellant-assessee. A perusal of the contract reveals such arrangement. Clause 11 of the Agreement states that franchisee shall pay to the appellant-assessee for text books, study materials, cost of advertisement and publicity campaigns, etc. The reimbursement of these expenditures has also been recorded in the proceedings before the lower authorities. In this connection, we also refer to various decisions of the Tribunal - Reliance Industries Ltd. - 2008 (12) S.T.R. 345 (Tri.-Ahmd.), Air Bus Group India Pvt. Ltd. - 2016 (45) S.T.R. 120 (Tri.-Del.).*

*16. In view of the above discussion and finding, we hold that the impugned order confirming the liability of the appellant-assessee to pay service tax under the category of commercial coaching and training by denying exemption under Notification No. 24/2004; on reimbursable expenditure under franchisee services; on payment to Edexcel under franchisee services are not tenable..."*

4.8 In the case of Orient Flight School [(2023) 13 Centax 307 (Tri.-Mad)], following has been held:-

*"32. In the first round of litigation before Tribunal, the demand confirmed for the period 2005-2010 (SCN dt. 22-10-2010) was remanded to the adjudicating authority to reconsider in the light of the decision of the Hon'ble Delhi High Court in the case of Indian Institute of Aircraft Engineering v. Union of India - 2013 (30) S.T.R. 689 (Del.). As per the judgment in this case, the Hon'ble High Court quashed the circular issued by Board F.No.137/132/201-ST dt. 11-5-2011. After the introduction of*

*notification No. 33/2011-ST which has already been noticed earlier, the Board issued the above circular clarifying that the Flight Training Institutes are coaching centres leviable to service tax under Section 65 (27) of Finance Act 1994. The said clarification issued by Board appeared to be contrary to the Notification No. 33/2011-ST. The Hon'ble High Court quashed the same observing that the circular is invalid. It was in this background that the Tribunal in earlier round of litigation remanded the matter for fresh consideration. However, even in such denovo-consideration, the adjudicating authority has relied upon the very same circular to confirm the demand.*

*32.1 The appellant has explained the nature of the course imparted by them. The appellant institute is approved by DGCA. The syllabi curriculum, the nature of theory classes, practical training everything is imparted as approved by DGCA. The appellant issues certificate approved by DGCA to the students who successfully complete the coaching and training. From the documents furnished by appellant it can be seen that DGCA fully controls the appellant institute, by prescribing the syllabus, the intake of students for each session, the manner in which exam is to be conducted etc; though the Final License (CPL/PPL) is issued by DGCA after a further examination conducted by DGCA. The DGCA is the statutory body under the Air Craft Act, 1934, read with Air Craft Rules, 1937. Under Rule 38 of Air Craft Rules, the DGCA is authorized to grant, renew and vary flight crew license, Student Pilot License, Private Pilot License Commercial Pilot License etc.*

*32.2 The question is whether the course imparted by appellant institute would fall within the meaning of 'recognized by law'. The Hon'ble High Court of Delhi in the case of Indian Institute of Aircraft Engineering (supra) has considered precisely the very same issue, so as to reach the conclusion that the clarification issued by the board vide circular dt. 11-5-2011 is invalid. The relevant paras read as under :*

*"22. The question which falls for consideration is whether the aforesaid would amount to 'recognition by law' of the Course Completion Certificate and On Job Training Certificate given by such institute.*

*23. The expression 'recognized by law' is a very wide one. The legislature has not used the expression "conferred by law" or "conferred by statute". Thus even if the certificate/degree/diploma/qualification is not the product of a statute but has approval of some kind in 'law', would be exempt.*

*24. "Recognize' is defined, in the Black's Law Dictionary, 8th Edition as confirmation of an act done by another person as authorized, formally acknowledging the existence; and, in Concise Oxford Dictionary as acknowledging the existence, validity or legality of.*

*25. We are of the view that the Act, the Rules and the CAR, having provided for grant of approval to such institutes and having laid down conditions for grant of such approval and having further provided for relaxation of one year in the minimum practical training required for taking the DGCA examination, have recognized the Course Completion Certificate and the qualification offered by such Institutes. The certificate/training/qualification offered by Institutes which are without approval of DGCA would not confer the benefit of such relaxation. Thus, the certificate/training/qualification offered by approved Institutes, has by the Act, Rules and the CAR been conferred some value in the eyes of law, even if it be only for the purpose of eligibility for obtaining ultimate licence/approval for certifying repair/maintenance/airworthiness of aircrafts. The Act, Rules and CAR distinguish an approved Institute from an unapproved one and a successful candidate from an approved institute would be entitled to enforce the right, conferred on him by the Act, Rules and CAR, to one year*

*relaxation against the DGCA in a Court of law. The inference can only be one, that the Course Completion Certificate/training offered by such Institutes is recognized by law.*

*26. There can be no doubt that such recognition through the Rules framed as aforesaid and through issuance of CAR, is a recognition by law, which is defined in Black's Law Dictionary, 8th Edition as the aggregate of legislation, judicial precedents and accepted legal principles and the set of rules or principles dealing with a specific area of legal systems. The Rules and the CAR aforesaid dealing with aircrafts, there can be no doubt, are law. The Supreme Court in Narsingh Pratap Singh Deo v. State of Orissa - AIR 1964 SC 1793 held that a law generally is a body of rules which have been laid down for determining legal rights and legal obligations which are recognized by Courts. Similarly, in R.S. Nayak v. A.R. Antulay - (1984) 2 SCC 183 it was held that law includes any Ordinance, By-law, Rule, Regulation, Notification, Custom or Usage having force of law. The Rules and CAR aforesaid have been enacted in exercise of legislative power as aforesaid.*

*27. The reasoning in the impugned Instruction dated 11th May, 2011 that because the qualification awarded by the Institute does not culminate in automatic issuance of license/authorization by the DGCA to certify the repair, maintenance or airworthiness of an aircraft and for which purpose a further examination to be conducted by the DGCA is to be taken, in our view mixes up and confuses, 'qualification' with 'a license to practice on the basis of that qualification'. An educational qualification recognized by law will not cease to be recognized by law merely because for practicing in the field to which the qualification relates, a further examination held by a body regulating that field of practice is to be taken. Immediate instance can be given of the qualification in the field of law. Though by amendment of*

*the recent years, the right to practice law on the basis of the said qualification has been made subject to clearing/passing a Bar Exam to be held by the Bar Council of India, the same does not make the qualification of law not recognized by law. The recognition accorded by the Act, Rules and CAR supra to the Course Completion Certificate issued by the Institutes as the petitioner cannot be withered away or ignored merely because the same does not automatically allow the holder of such qualification to certify the repair, maintenance or airworthiness of an aircraft and for which authorization a further examination to be conducted by the DGCA has to be passed/cleared.*

*28. We are therefore of the view that the Instruction aforesaid holding the petitioner to be assessable to Service Tax is contrary to Section 65(27) and the Notification dated 25th April, 2011. Accordingly the said Instruction and the show cause notices given to the petitioner are quashed. The Rule is made absolute and the writ petition is disposed of."*

*32.3 ....."*

*32.4 The very same issue as to whether Flight Training Institute and Aircraft Engineering Institutes are liable to service tax under 'Commercial Training or Coaching Service' was considered by the Hon'ble Allahabad High Court in the case of CCE, Cus., ST v. Garg Aviations Ltd. 2014 (35) S.T.R. 441 (All.) The Hon'ble High Court followed the decision of the Hon'ble High Court in the case of Indian Institute of Aircraft Engineering (supra) and held that the activity is not taxable. This case was appealed to Hon'ble Supreme Court, and the appeal was dismissed on 6-2-2018.*

*32.5 In the case of Star Aviation Academy v. CST, Delhi - 2018 (15) G.S.T.L. 342 (Tri.-Del.) the Tribunal held that the Aircraft Maintenance Engineers (AME) Training imparted by an institute authorized by DGCA and issue of AME basic course completion*

*certificate is valid and recognized by law and therefore the levy of service tax under 'Commercial Coaching or Training Services' cannot sustain. The department filed appeal before the Hon'ble Apex Court as reported in 2018 (15) G.S.T.L. J117 (SC). It is seen that the Hon'ble Apex Court directed to tag with SLP (C) No. 6083/2014. The said SLP is the one filed against the judgment of Hon'ble High Court of Delhi which has already been dismissed as withdrawn by department.*

*32.6 From the above, we find that the issue stands covered by the above judgments which have categorically held that these institutes are not liable to pay service tax under 'Commercial Coaching or Training Services'."*

4.9 In the case of M/s Computer Kids [2025 (8) TMI 11-(CESTAT NEW DELHI)], following has been held:-

*"12. The courses conducted by the appellant are fully recognized by the respective universities. That both the universities are recognized by their respective State Government i.e. SMU is a public partnership between Government of Sikkim & Manipal & MSU is established by Government of Tamil Nadu. The students who are admitted in the Institute of the appellant undergo a regular course of study and practical training at the Institute of the appellant. Thereafter, examinations are conducted under the supervision of the University and evaluation of the examination is done by the University. After the results are declared, statement of marks is forwarded by the University to the appellant which is then forwarded to the students. After successful completion of the courses by the students, the degrees are awarded by the University.*

*13. We find that the observations made in the impugned order that the appellant did not issue any degree/diploma/certificate recognized by law and the same is issued by SMU and MSU and therefore, the benefit of the*

*notification is not available to the appellant is contrary to the earlier decisions of the Tribunal as discussed above. In the case of Tandem Integrated Services, the Revenue had raised similar plea that the respondent therein is not a regular college which grants certificate, diplomas or degree for any educational qualification recognized by law and would therefore, not come within the exemption under subsection (27) of Section 65 of the Finance Act, 2003. The learned Division Bench did not agree with the submissions of the Revenue in view of para 2.2.3 of CBEC Circular dated 20.06.2003 clarifying the position and also in view of the decision in Mallapuram District. The observations of the Division Bench are as under:-*

*"The assessee herein is also imparting education to obtain recognised degrees/diplomas from Universities and that apart the students are also being provided training to appear for competitive examinations, entrance tests, etc. It is not necessary that the respondent-firm should issue a certificate, diploma or degree. The students given coaching by the appellant are issued with certificates, diplomas and degrees, as issued by the Universities; identical to regular colleges and parallel colleges also. The students are being prepared for courses and are imparted training to appear for competitive examinations as well. The decision of this Court in Malappuram District Parallel College Association (supra) would squarely apply to the respondent-firm, since they are imparting coaching for courses leading to recognised certificates, diplomas and degrees issued by lawfully constituted academic bodies. Hence when such institutes also carry on training schedules to prepare students for competitive exams, categorised as "commercial coaching"; as per the clarification issued by the CBCE, they stand exempted."*

*14. The appellant is in the nature of a parallel college and the courses offered and conducted at their centre is*

*recognised by law leading to the issuance of certificates, degrees and diplomas which are awarded by the universities to the students. Following the decisions referred to, the appellant cannot be said to be engaged in providing "Commercial Training or Coaching Service". The impugned order is, therefore, bad and needs to be set aside.*

*15. The learned Counsel for the appellant has referred to the Circular No.59/8/2003-ST dated 20.06.2003, which clarified that exemption from service tax shall be available to such institutes which imparts education for obtaining recognised degrees etc. and also imparts training for various entrance test. Para 2.2.3 of the Circular is quoted below:-*

*"2.2.3 Certain doubts have been raised in case of commercial coaching and training. In this regard, the following is clarified,-- Whether service tax is leviable on institutes providing commercial coaching in addition to recognized degree courses: Some institutes like colleges, apart from imparting education for obtaining recognized degrees/diploma/certificates , also impart training for competitive examinations, various entrance tests, etc. It is certified that by definition, such institutes or establishments, which issue a certificate, diploma or degree recognized by law, are outside the purview of "Commercial Training or Coaching Institute". Thus, even if such institutes or establishments provide training for competitive examinations, etc. such services rendered would be outside the scope of service tax."*

*16. Similarly, vide Notification No. 10/2003 dated 20.06.2003, Central Government, in the public interest has exempted the taxable services provided by a commercial training or coaching centre, in relation to commercial training or coaching, which form an essential part of a course or curriculum of any other institute or establishment,*

*leading to issuance of any certificate or diploma or degree or educational qualification recognized by law for the time being in force, to any person, from the whole of the service tax leviable thereon under Section 66(2) of the Act. This Notification had come into force w.e.f. 01.07.2003.*

*17. For the sake of completeness we may refer to the subsequent changes in the legal provision. The Government modified the definition of "Commercial Training or Coaching Centre" by removing the exclusion clause, w.e.f. 1.5.2011, however, vide Notification No.33/2011-ST dated 25.04.2011, the Central Government exempted any coaching or training leading to grant of a certificate, diploma or degree or any educational qualification which is recognized by any law. Thus, the position remained the same and the coaching & training centres were not amenable to service tax.*

*18. Thus in terms of the circular read with the notification the appellant is eligible for exemption as they are imparting education to the students in respect of which SMU, Sikkim & MSU, Tirunelveli issues the degrees which are recognized by law. 19. The decision of the Tribunal in M/s Soft Dot Hi-Tech Educational and Training Institute versus Commissioner Service Tax, Delhi, - III14 , relied on by the Revenue is based on the facts of that case where the students were directly paying charges to the appellant therein. Moreover, none of the decisions of the High Court and the Tribunal were referred to in the said case. 20. The show cause notices have also made allegation that the appellant is providing coaching for the multimedia professional courses and claiming exemption on the amount charged for books purchased from open market and supplied by them to the students pursuing multimedia professional courses. The fee charged by the appellant from the students is inclusive of value of books, and the same is not reflected separately in the bills raised to the students. The appellant has placed*

*reliance on Notification No.12/2003- ST dated 20.06.2003, which provides that the value of goods and material sold by the service provider to the recipient of service, while providing service shall not be liable to service tax subject to the condition that there is documentary proof specifically indicating the value of the said goods and materials sold. Thus, the intention is to immune goods and materials from levy of service tax.*

4.10 In the case of M/s ITM International Pvt. Ltd. [Service Tax Appeal No.825 & 960/2010] vide Final Order No.56696-56697/2017 dated 11.09.2017 following has been held:-

*"2. The appellants are engaged in the field of education and coaching. They are registered with the ST department under the category of "Commercial Training or Coaching Services". The dispute in the present appeal relates to tax liability of the appellant. In respect of two main activities, namely, (a) fees received for offering courses of London School of Economics (University of London) resulting in issue of degree by the University of London and (b) Fee received for coaching provided for Business English and Personality Development. The present appeal is against confirmation of demand of service tax against the appellant under the category of commercial coaching or training service. The case was decided by the Division Bench and as per Interim Orders No.15-16/2017 dated 09.02.2017, the following difference of opinion was framed for reference to the third member:*

*"Demand within the limitation period is required to be upheld, as held by learned Member (Technical) or the entire demand has to be set aside as held by learned Member (Judicial)."*

*3. The case is listed for resolving the said difference of opinion. I have heard Ms Lalita Krishnamurthy, Id CA on*

*behalf of the Appellant and Mr Ranjan Khanna, Id AR on behalf of the Revenue. I have perused the appeal records, Including written submissions and various case laws relied upon by both the sides.*

*4. The Member (Technical) held that the appellants do not issue degree or diploma recognized by law. As such, he held them liable for service tax, holding that they are covered by the definition of "Commercial Training or Coaching Centre" in terms of Section 65(27) of the Finance Act, 1994. Ld Member (Judicial) held that the course provided by the appellant resulted in the issue of degree by the University of London (London School of Economics) which is recognized by law in India. She relied on various communications of UGC and AIU to hold that the degree which was issued, on completion of course is recognized as equivalent to degree issued by Indian Universities or Institutions. Reliance was also placed on the decision of the Commissioner (Appeals) order dated 30.01.2014 wherein it was held that the course offered by the appellant are recognized by law in India and as such the appellants would not fall within the ambit of "Commercial Training or Coaching Centre." Regarding Business English Course and Personality Development Courses, Member (Judicial) held that as appellant will not fall under the category of commercial training or coaching centre, no service tax liability can arise on such courses offered by the appellant.*

*5. On the first issue, regarding courses offered by the appellant resulting in the degrees/diplomas awarded by University of London, I find that these degrees/diplomas are to be considered as recognized by the law for the time being in force. It is noted that inference that degree or diploma or any educational qualification should be issued by commercial trainee or coaching Centre itself, is too literal interpretation of the statute. It is a well known fact that the colleges in India provide courses resulting in degrees or*

*diplomas but the said degree and diplomas are issued by the University or the main Institute to which these colleges are affiliated. If it is to be held that as the degree is not issued by the college which is providing course, the college should be considered as a „commercial trainee or coaching centre“, subjected to service tax, such interpretation will result in absurd consequences. Admittedly, the degree or diplomas are issued by the Universities or the main organization to which the college or an institute or a centre is affiliated. Keeping this in the background, it can be seen that the degree or diploma being issued by University of London can be considered at par while interpreting the scope of commercial training or coaching centre.*

*6. The next question is whether such a degree or diploma is recognized by law for the time being in force. Here, the reason discussed by Member (Judicial) is proper and sustainable. The UGC and AICTE etc are recognizing bodies of a University or an institution. The degree or diploma awarded by these institutions are being considered as recognized by law for time being in force. In this connection, we note the position has been clarified regarding the scope of the term qualification „recognized by any law“ will include such course as are approved or recognized by any entity established under a central or a state law, including delegated legislation, for the purpose of granting recognition to any education course.*

*7. Further, it is seen that the Ministry of Human Resource Development vide their notification dated 13.03.1995 stated that the Govt. of India had decided that those foreign qualifications which are recognized/equated by Association of Indian Universities are treated as recognized for the purpose of employment to posts and services under the Central Government. No separate orders for recognition of such foreign qualification is needed to be issued. Here it is relevant to note that UGC had advised the Indian students*

*to ascertain information regarding equivalence of the degrees and diplomas awarded by accredited Universities abroad. The degree/diploma programmes offered by the appellant resulting in the issue of certificate by the University of London (LSE) which is treated as equivalent to degree or diploma of public Universities in India. As such, I find that the appellants will fall outside the scope of definition for „commercial training or coaching centre.“ It may be noted here that even the impugned order indicated that the certificate and diplomas issued by LSE are recognized by all the national universities. However, the adjudicating authority did not consider his own finding as relevant and followed the Board circular which refers to the recognition by statutory authorities like UGC etc.*

*8. It is relevant to note here that the department has been taking consistently a view that when an educational institute is affiliated to a university/institution awarding a degree recognized by law, then the said institute is not a commercial training or coaching centre. Reference can be made to circular No.26/2003- 28.08.2012 and 26.02.2010 of the Board. Admittedly, the appellants were providing course resulting in the award of B.Tech, BBA, MBA of Allahabad Agricultural Institute (deemed university). No demand for Service Tax has been made in respect of these courses. Even on this ground, the appellants can not be considered as commercial coaching or training centre. Apart from the fact that the appellants will fall outside the purview of commercial coaching or training centre, I find that the Business English Course and Personality Development course offered by the appellants will be covered by exemption notification No.9/2003 ST. In this connection, reliance can be placed on the decision of the Tribunal in Anurag Soni 2017 (52 STR 18 Tribunal Delhi) wherein the tribunal observed as below:*

*"5. Notifications No.9/2003 and 24/2004 exempts vocational training institutes from payment of Service Tax entry „commercial training or coaching“. "Vocational Training Institute" means a commercial training or coaching centre which provides vocational coaching or training that impart skills to enable the trainee to seek employment or undertake self employment, directly after such training or coaching. Admittedly, the appellants are engaged in providing coaching in English, French and German language skills. Training included improving the skills of pronunciations, manner of speaking etc. The original authority recorded that this sort of training imparted by the appellant helps in getting employment for the participant in Multi National Companies and various Corporation/Institutions where improved particular skill in speaking is required qualification. We are in agreement with the findings recorded by the original authority. The impugned order has at length examined the provisions of Section 3(2) of the Official Language Act, 1963, Article 343(2) of Constitution of India and the status of English in India. We find that the whole discussion is misplaced and irrelevant to decide the taxability of the appellant under „commercial coaching or training“. As rightly contended by the appellant, it is not the status of the English, but the nature of coaching given by appellant which is relevant to decide the exemption under notification. Neither the tax entry nor the exemption notifications are having reference to any point of discussion which formed basis for the conclusion drawn by the impugned order. We find that the impugned order was mis-directed when examining the legal issue. Accordingly, same is set-aside."*

*9. In view of the above discussion, I find that the demand for Service Tax against the appellants, not sustainable and accordingly I agree with the Member (Judicial)."*

4.11 In view of the above, we do not find any merits in the impugned order to the extent it is in relation to demand of service tax on commercial coaching and training services.

4.12 In respect of the demand confirmed under OIDAR services, we find that the Appellant was not owning the data which was being provided online against a cost instead they were providing the web based services to various Departments of Government of Uttar Pradesh by way of putting online tenders and other forms which were required to be made public for various purposes of those Departments. It facilitated the submission of tender documents etc., to Government Departments. It has been constantly held that OIDAR Services are in respect of the data which is shared online against a consideration. In this regard impugned order records as follows:-

*"During the provision of such services no data or information online or otherwise are accessed or retrieved by the clients. Thus, it is beyond any doubt that such activities can never be classified as 'online data access & retrieval service'. In this regard, it may be pointed out that the noticee has duly discharged the service tax liability on to AMC charges received during the relevant period 01.04.2006 to 31.03.2010. Further, in respect of networking/electrical charge the noticee w.e.f. 16.05.2008 the noticee is duly discharging its service tax liability under the category of "Management, Maintenance & repair Service. As management of the infrastructure & networking requirement of the clients (government department) and maintenance thereafter is expressly covered under the category of "management, Maintenance & repair Service".*

*I am not convinced with the submission of the noticee that the e tender customization services are not at all taxable and website development and AMC/ Networking services provided by the noticee are taxable only w.e.f 16.05.08 and*

*by any reckoning none of them are taxable under "Online Data Access & Retrieval Service'.*

*Having gone through the submissions carefully I find that the noticee has distinguished their activities from a Internet Service Provider (ISP) or a dot com company but they have not been able to establish that their e tender customization activity will not fall in the category of service in relation to on-line information and database access or retrieval or both.*

*S.65(105)(zh) of the Finance d Act 1994 reads "taxable service" means any service provided or to be provided to any person, by any person, in relation to on-line information and database access or retrieval or both in electronic form through computer network, in any manner.*

*The definition of taxable service in this regard is wide enough to cover the activities of e tender customization as explained by the noticee herein above. The taxable service definition covers not only information and database access or retrieval online but also the activities in relation thereto. It is not the case of the noticee that e tender forms are customized offline. Customization enables access and retrieval both between the department and the tendering applicant. The noticee is entitled to charge fee from both, the department and the applicant for the Customization activity as per the GO of the UP Government.*

*The case laws in Nestle India 2011(22)STR165(Tri-Delhi) and United Telecom 2009(14)STR212(Tri-Bang) in my view are distinguishable in the facts and circumstances of the present case and secondly the former is with reference to pre deposit and the latter stands appealed in Hon'ble Karnataka High Court.*

*I further gather from the submissions of the noticee that the role of nodal agency to implement the computerization programme of the government of Uttar Pradesh to use information technology, was assigned to them under GOs*

*dated 16.08.2002 and 11.01.2008. The noticee has sought to view the programme in three differentiated category viz E-Tender/Customization Activity, Website Development Service and Networking, AMC, Peripherals Service to advance their plea that barring E-Tender/Customization Activity these services at best can be classified under the category of information technology software services or Management, Maintenance or Repair ation Lid services which became taxable w.e.f 16.05.08. I am unable to persuade myself to accept this fragmented view. An integrated view flowing from the above GOs of UP government is required to be taken. Taking this view of the facts I find that the show cause notice has correctly classified the activity as service in relation to on-line information and database access or retrieval or both. All the activities enumerated by the noticee such as Website designing and development, Hosting web server space, Domain name registration, Broadband Connection for internet, Web server space, Development of Web enabled Software and LAN networking lead to launching website to enable on-line information and database access or retrieval or both. It being an activity in relation to on-line information and database access or retrieval or both will be covered under taxable service defined under S65(105)(zh) of Finance Act1994. Likewise activities of the the noticee of Networking, AMC, Peripherals Service are also related to on-line information and database access or retrieval or both."*

4.13 From the above as recorded in the impugned order it is evident that appellant was not owning any data or providing any data access or retrieval services to any of the government departments. On the contrary they were providing various IT Infrastructure services by way of creating to disseminate the information and allow the access to various clients of the service recipients in respect of the services provided by them. In case of

Philips Electronics India Ltd [2019 (21) G.S.T.L. 450 (Tri. - Chennai)] Chennai bench has observed as follows:-

**5.1** *From the facts on record, it is seen that the following IT Infrastructure services were centrally provided by Philips Netherlands to all their locations worldwide :*

- (i) Managed Backbone infrastructure to enable communication by means of electronic mail for its employees;*
- (ii) Managed Desktop and managed server service offerings;*
- (iii) Maintenance of software of users' desktops;*
- (iv) Email services for non-employees;*
- (v) Services to manage personal calendar, share calendar, personal contacts, corporate directory, to do offline delegation, mail back-up and restore services;*
- (vi) IT Infrastructure by way of Private Wide Network Services.*

**5.2** *The department has sought to bring these IT infrastructure services within the fold of OIDAR. We find that the term "Online Information and Database Access or Retrieval" has been defined under Section 65(75) of the Act to mean providing Data or Information Retrieval or otherwise to any person in electronic form through a computer network. Further under Section 65(105)(zh) of the Act, taxable service means any service provided or to be provided to a client by any person in relation to Online Information and Database Access or Retrieval or both, in electronic form through computer network in any manner.*

**5.3** *The main take away from the definitions is that services provided should facilitate not only online information but also Database Access or Retrieval. From the facts on record, it appears to reason that the*

*infrastructure services are nothing but a spider web group which connects Philips Netherlands to all its locations worldwide through the Wide Area Network (WAN) of internet protocol. For such Philips Global Network Services, payment is made on the basis of invoices raised by Philips Netherlands towards maintenance of server/portal, license fees, server software maintenance cost, infrastructure for global platform, hiring of web space for storing data, management and maintenance of web portal, licence cost for access for wireless WAN environment, Directory services for listing etc. Some of these services which can be availed by Philips locations and employees are of the nature of "Calendaring and Scheduling Directory, Philips e-mail, file back up etc. In any case, all these infrastructure services are only in the nature of providing intra connectivity between Philips locations worldwide and the payments made are obviously then for sharing of the maintenance cost between the Philips' units and not as fees for supply of online information or retrieval of data from the portal."*

4.14 In case of PVR Ltd. [2021 (55) G.S.T.L. 435 (Tri. - Del.)] Delhi bench has observed as follows:

**"50.***The explicit terms of the contract are always the final word with regard to the intention of the parties. This is what was observed by the Supreme Court in Nabha Power Limited. The terms of contract have also to be treated on their face value and should be presumed to mean what they say and must be acted upon unless proved to be sham or farce, as was observed by the Allahabad High Court in Reliance Industries Limited. In CMS (I) Operations & Maintenance Co. P. Ltd. v. C.C.E., Pondicherry [2007 (7) S.T.R. 369 (Tri. - Chennai)], the Tribunal observed that the pith and substance of an agreement has to be determined and that the main*

*purpose and not the incidental purpose for determining whether tax is leviable or not has to be examined.*

**51.***A perusal of the Terms & Conditions of the contract reproduced above show that the transaction can basically be split into three parts which are as under :*

*Stage 1 : Viewing of information i.e. movie show timings/date of release/availability of vacant seats etc. This Facility is provided free of cost;*

*Stage 2 : Booking of tickets by selecting the seats and making payment through an online portal;*

*In making this payment, an amount of convenience fees is also charged; and*

*Stage 3 : Collecting/Retrieving of tickets -*

*(1) Over the counter by showing the booking id or*

*(2) By way of taking a print through a machine kept outside the counter*

**52.** *The Terms and Conditions also show that when a user accesses and uses the website he agrees to be bound by the terms and conditions. A user has been defined to mean a person who accesses the website and avails the online booking facility. The Terms and Conditions also indicate that convenience fee is collected over and above the value of the ticket in lieu of the convenience given to a user by PVR Cinema. Convenience is a facility offered to a user. A conjoint reading of the clauses of the Terms & Conditions of the contract would indicate that the purpose for charging convenience fee is to receive a consideration for offering a facility of online booking and in the facts of the present case would relate to online booking of tickets. It needs to be noted that the purpose of the transaction is*

*to book and procure a ticket online by a user, though the website may provide for various other information like the current movie being exhibited, the upcoming movies and the timing of the movies. These information are even otherwise available through newspaper advertisements or other advertisements and no charge is leviable for the same.*

**53.** *It cannot be doubted that the dominant intention of a user is to book a movie ticket and convenience fee is charged for the reason that online booking facility saves precious time and effort of a user, since otherwise he would not only have to go to the movie hall but may also have to stand in a long line at the window to procure the ticket. This online booking facility, therefore, offers a convenient way of procuring a ticket as against the conventional method of having to stand outside the ticket counter in a long queue. It is clear that the pith and substance and the dominant intention of the arrangement is not to access/retrieve data/information but it is an arrangement by which the facility of online booking is made available to users.*

**54.** *It needs to be remembered that any person who visits the website of the appellant to seek information about the show timings or like information does not have to make any payment and it is only when a ticket is booked online that convenience fee is required to be paid by the user. The substance of the transaction is, therefore, to book a ticket online and thereby engage in e-commerce. It cannot, therefore, be said that convenience fee is charged for any access/retrieval of information or database as contemplated under OIDAR service.*

**55.***In this connection reference needs to be made to the decision of the Tribunal in Click for Steel Services, wherein the assessee was engaged in the business of conducting*

*online auctions for various commodities such as MS Steel for a commercial consideration. The allegation of the Department that the assessee had been providing "online information and database access or retrieval service" was not accepted by the Tribunal and it was held that e-commerce service was provided. The observations of the Tribunal are as follows :*

*"4. We have carefully considered the submissions made by both sides. From the facts of the case, we find that the respondent is running website through which the interested steel manufacturer/trader are making trade. The respondent is buying and selling the steel product of various steel manufacturer/trader. We do not find that the buyer of the goods is accessing any information online or data online on the respondent's site but they are only interested for sale and purchase of the steel products. The respondent with regard to such trading are getting margin from sale and purchase. Hence the service of the respondent is clearly of e-commerce in respect of steel products...."*

*(Emphasis supplied)*

**56.***The Board Circular dated 9-7-2001 also clarifies that e-commerce transactions do not fall within the ambit of OIDAR service. It also clarifies that when information is supplied free of charge by the website, no service tax is payable and if such website charges a fee for providing information, only then such a website will be liable to tax under OIDAR. This clarification makes it abundantly clear that fees must be charged for providing information and consequentially liable to service tax under the category of OIDAR. The said Circular dated 9-7-2001 is reproduced below :*

**Government of India**  
**Ministry of Finance**  
**Department of Revenue**

9th July, 2001

*Subject : Tax on 15 New Services to be effective from 16-7-2001 - Instructions regarding.*

***Extension of service tax to fifteen more services 2. :***

*In regard to the new services, which will be subject to service tax from 16th July, 2001, certain issues have been brought to notice during the course of discussion with the concerned Association. These have been discussed and clarified in the Annexures appended as per details below.*

- |       |   |    |    |
|-------|---|----|----|
| (i)   | xx  | xx | xx |
| (ii)  | xx  | xx | xx |
| (iii) | xx  | xx | xx |
| (iv)  | <i>On-line information and database access and/or retrieval (OIDAR)</i> |    |    |

*Annexure IV*

*Annexure IV*

*On-line information and database access and/or retrieval :*

- |     |                                  |    |    |
|-----|----------------------------------|----|----|
| (1) | xx                               | xx | xx |
| (2) | xx                               | xx | xx |
| (3) | xx                               | xx | xx |
| (4) | xx                               | xx | xx |
| (5) | xx                               | xx | xx |
| (6) | <i>Point for clarification :</i> |    |    |

*A question has been raised as to whether e-commerce transactions (other than providing online information and data) are covered in the ambit of service tax. It is clarified that in e-commerce transactions, no service of online*

*information and database access/retrieval is involved. Therefore, e-commerce transactions will not ordinarily be covered under the service tax net. Normally, the websites do not charge the surfers for information of sale of goods or services offered by them. If at all they do, service tax will be payable on the amount charged for providing the information.*

*Another point raised related to applicability of service tax on inter-connectivity services provided by one ISP to another and the charges recovered for such services. It is understood that this is done to interconnect various networks so as to reach the server where the information is stored. It is informed that interconnection of one ISP to another is a commercial and technical arrangement under which service providers connect their equipment, networks and services to enable their customers to have access to the data or information. Through this arrangement, it is the customer of an ISP who ultimately receives on-line information and database access and/or retrieval service. Service tax on the amount charged from him is payable. Therefore, interconnection charges paid by one ISP to another ISP are not liable to service tax.*

**57.** *The Terms and Conditions of online booking facility do not mention that the essence of the contract is for accessing or retrieving any information or data. In fact, the terms are restricted to the facility of online booking. An arrangement which is predominantly for OIDAR would have provisions clearly indicative of the nature of data/information that is permitted to be accessed or retrieved, obligations pertaining to copyright violations, reproductions, replications, restrictions and several other covenants through which the data and information is either sought to be protected or controlled. Such an arrangement would also contain a term that on payment of fee, the user*

*shall have limited or unlimited rights to retrieve or access data/information making it abundantly clear as to what the dominant intention of the contract is. As against this, the Terms and Conditions of the contract involved in the present appeals relating to online booking arrangement make no such averments or declarations and instead are restricted to the grant of online booking facility and nothing more.*

**58.** *Where fees is not charged for information and is instead charged for other services like convenience/facility of online booking, even though such fees would be for a provision of service, it would not mean that such fees is charged for providing information/data. Thus, unless the fees is for provision of information/data, the arrangement cannot fall under OIDAR. In the present case the dominant intention for charging fees, as noticed above, is to grant facility of online booking and not for access/retrieval of any data or information.*

**59.** *The submission of Learned Authorized Representative of the Department that since a booking code is provided to a user when online booking facility is availed and the user has to go to a movie hall to get a print out of the ticket, would mean that there is access/retrieval of information cannot, therefore, be accepted. The code received in the process is purely incidental and cannot be said to be the main object of the transaction.*

**60.***In this connection it would be pertinent to refer to the Circulars dated 29-2-2008 and 6-8-2008 issued by the Board clarifying that if a transaction contains major and ancillary elements, classification has to be determined based on the essential features or the dominant element and that the guiding principle is to identify the essential*

*features of the transaction. The said Circulars are reproduced below :*

*Circular Dated 29-2-2008*

*"3.2 For the purpose of classification of a service covering number of separate services, a view has to be taken as to whether an individual service is merely a component of the overall supply or is itself a distinct and independent supply i.e., whether the component is merely ancillary to the principal supply or the component can be considered as separate taxable service in its own right. A service, which does not constitute for a customer an aim in itself but a means of better enjoying the principal supply, is considered as a supply ancillary to the principal supply.*

*Section 65A states the principles for 3.3 classification of taxable services. Classification of a composite service is based on that component of the service which gives the essential character. There is a need to determine whether a given transaction is the one containing major and ancillary elements or the one containing multiple and separate major elements. In the case of a transaction multiple and separate major elements. In the case of a transaction containing major and ancillary elements, classification is to be determined based on the essential features or the dominant element of the transaction. A supply which comprises a single supply from an economic point of view should not be artificially split. The method of charging or invoicing does not in itself determine whether the service provided is a single service or multiple services. Single price normally suggests a single supply though not decisive. The real nature and substance of the transaction and not merely the form of the transaction should be the guiding factor for deciding the classification."*

*(Emphasis supplied)*

*Circular Dated 6-8-2008*

*"..... The contention that a single composite service should not be broken into its components and classified as separate services is a well-accepted principle of classification. As clarified earlier vide F. No. 334/4/2006-TRU, dated 28-2-2006 (para 3.2 and 3.3) [2006 (4) S.T.R. C30] and F. No. 334/1/2008-TRU, dated 29-2-2008 (para 3.2 and 3.3) [2008 (9) S.T.R. C61], a composite service, even if it consists of more than one service, should be treated as a single service based on the main or principal service and accordingly classified. While taking a view, both the form and substance of the transaction are to be taken into account. The guiding principle is to identify the essential features of the transaction. The method of invoicing does not alter the single composite nature of the service and classification in such cases are based on essential character by applying the principle of classification enumerated in section 65A. Thus, if any ancillary/intermediate service is provided in relation to transportation of goods, and the charges, if any, for such services are included in the invoice issued by the GTA, and not by any other person, such service would form part of GTA service and, therefore, the abatement of 75% would be available on it." (Emphasis supplied)*

**61.** *There is, therefore, no manner of doubt that the essential characteristic of the arrangement under consideration in these appeals is availing the facility of online booking of ticket and not accessing/retrieving any data/information. Service tax under the category of OIDAR, therefore, cannot be levied upon a user merely because he receives a code for getting a printout of the ticket from the cinema hall.*

**62.** *The aforesaid discussion leads to the inevitable conclusion that convenience fee is not charged by the*

*appellant for any access/retrieval of information or data base. Service tax under OIDAR cannot, therefore, be levied upon the appellant for the period prior to 1-7-2012. The appellant has stated that it started discharging service tax on convenience fees under the negative list regime after July 1, 2012 under the category of "other taxable services".*

In view of the above decisions and observations we do not see any merits in confirmation of the demand made in this respect.

4.15 In respect of Business Auxiliary Services the impugned order observes as follows:-

*"The noticee had outsourced some of its activity to its vendors and charged certain amount as job charges as reflected in the profit & loss A/c which is liable to service tax under Business Auxiliary Service.*

*Thus as per the noticee's letter dated 12.10.11 (RUD-I), the service tax liability against the amount received towards the 'Business Auxiliary Service' for the period 2010-11 is calculated here as under:*

Year	Rate of Service Tax	Job / Other charges received	Job / Other Charges received (AMC)	Total Amount received	Service Tax due
1	2	3	4	5(3+4)	6
2010-11	10.30	3982787	217250	4200037	432603.81

*They are thus liable for payment of service tax amounting to Rs. 4,32,604/-.*

*The noticee counters the imputation that their activity is taxable under the category of Business Auxiliary Service submitting that during the relevant period sale of goods transactions such as antivirus software and computer peripheral have been classified under the head 'Job/other work charges' in their books of account As I can infer from the submission, the transaction was part of job assigned to them to develop and install application software in accordance to need of the departments effectively, vide UP*

*Government Order No. 1518/78 I.T.-2-2002 dated 16.08.2002 and to implement the e-tendering system effectively vide government order No. 72/78-2-2008-441T/2008 dated 11.01.2008. I have already arrived at conclusion that the activities under the above Government Order constitute activity as defined in S.65(105)(zh) of the Finance Act 1994 i.e. service in relation to on-line information and database access or retrieval or both. The job assigned the noticee under the above GOs is to implement computerization and use of information technology in governance in the state of UP is not confined just to Management, Maintenance and Repair Service. It was for the lack of providing complete information in their letter Ref No UPLC: ACCTS: Service Tax dated 30.7.11 that the services were classified as Business Auxiliary Service. The noticee using the terminology as reflected in the Balance sheet as 'job charges' also misled the author of the show cause notice.*

*I also do not find convincing the submission of the noticee that the demand amounting to Rs. 43,460 stands raised on Sale of Goods. The noticee has made the submission in isolation and without any evidence. They have been a service provider to Government of Uttar Pradesh and its undertakings and not a supplier of goods. In the defence reply I do not find any explanation on facts regarding rest of the demand. I have no other option but to infer that the entire demand of Rs. 432603/- is liable to be confirmed with interest."*

4.16 On perusal of the above it appears that what is sought to be taxed under these category are certain services outsourced by the Appellant to certain vendors. However, the demand has been confirmed only for the reason that there was not enough information provided to the Adjudicating Authority. However, we find that neither the Show Cause Notice nor the Order-In-Original justified under which sub-category of Section 65(19) the

services were being provided to the other businesses. That being so constantly it has been held that demand made under this category without specifying the specific sub-clause on Section 65(19) the demand cannot be made. Accordingly, we do not find any merits in this demand also.

4.17 Thus we do not find any merits in the demand confirmed against the appellant in respect of these 03 services.

4.18 As we do not find any merits in the demand made, the Departmental Appeal with regards to the waiver granted from penalty by the impugned order in terms of Section 80 has no merits.

5.1 Appeal filed by the Appellant is allowed.

5.2 Appeal filed by the Revenue is dismissed.

(Pronounced in open court on 13.11.2025)

**Sd/-**  
**(SANJIV SRIVASTAVA)**  
**MEMBER (TECHNICAL)**

**Sd/-**  
**(ANGAD PRASAD)**  
**MEMBER (JUDICIAL)**

*Nihal*