CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
OLD RED BUILDING, 38,M.G.Marg,CIVIL LINES, ALLAHABAD

Dated: 04/03/2016

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/ 70097/2016 DB dated 19/01/2016

I am directed to transmit herewith a certified copy of order passed by the Tribunal under section 35-C(1) of the **Central Excise and Salt Act, 1944.**

Asstt. Registrar

Application	Appeal	Name and Address of Appellant
	ST/1806/2010ST	SUNRISE EDUCATION GOEL PALACE, 2ND FLOOR FAIZABAD ROAD INDIRA NAGAR, LUCKNOW
	Name and Address of Respondent	COMMISSIONER OF CENTRAL EXCISE,KANPUR 117/7, SARVODAYA NAGAR KANPUR

Other Appellants and Respondents as per Annexure

Copy To

3 Advocate(s) / Consultant(s — SH DHARMENDRA KUMAR,CA
11-B, RAJSHEE APPARTMENT
IST FLOOR, DALIBAGH,
OPP NARMADA BHAWAN, LUCKNOW

4 Bar Association, CESTAT, ALLAHABAD

5 Director Publications, Customs, Excise. I.P. Estate, Delhi

6 M/s Centax Publications Pvt. Ltd., 1512-B, Bhishm Pitamah Marg, New Delhi-3

7 Company Law Institute of India Pvt. Ltd., No.2 (old no.36), Vaithyaram Street, T. Nagar, Chennai-17

8 Taxmann Allied Service Pvt. Ltd., 59/32, New Rohtak Road, New Delhi-110005

9 Easy Service Tax Online Dot Com Pvt. Ltd., 407A, Iscon Mall, Satellite Road, Ahmedabad-15

10 LAWCRUX Advisors Pvt. Ltd., LAW House, 3-8, Sector-10, Faridabad 121003 (Haryana)
11 TaxIndiaOnline.com Pvt. Ltd., 2nd Floor, Vasant Arcade, Vasant Kunj, New Delhi – 110070
12 Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Hyderabad – 38
13 The ICFAI society, 52, Nagarjuna Hill,Punjagutta Hyderabad.-500082
14 C.D.R. 15 Office Copy 16 Guard File

Asstt. Registrar
Regional Bench, Allahabad

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
Old Red Building, 38 M.G. Marg, Civil Lines, Allahabad

Date of hearing/order: 19.01.2016

Appeal No. Service Tax/1806/2010-CU (DB)

[Arising out of the Order-in-appeal No. Service Tax/Appl/Knp/2010 dated-8.09.2010 passed by the Commissioner of Central Excise (Appeals), Kanpur]

For approval and signature:

Hon'ble Mr. Anil Choudhary, Judicial Member
Hon'ble H.K. Thakur, Technical Member

1	Whether Press Reporter may be allowed to see the Order for publication as per Rule 26 of the CESTAT (Procedure) Rules, 1982?
2	Whether it should be released under Rule 26 of CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?
3	Whether their Lordships wish to see the fair copy of the Order?
4	Whether Order is to be circulated to the Departmental authorities?

M/s. Sunrise Education

..Appellant

Vs.

C.C.E., Kanpur

.... Respondent

Appearance:

Sri Dharmendra Kumar (C.A.)

for the appellant

Shri Pawan Kumar Singh , Supdt.(A.R.)

for the Respondent/Revenue

Coram: Hon'ble Mr. Anil Choudhary, Judicial Member
Hon'ble Mr. H.K. Thakur, Technical Member

Final Order No. 70097/2014

Per: Mr. Anil Choudhary:

The appellants M/s. Sunrise education is in appeal against Order-in-Appeal dated 8/9/10 passed by the Commissioner (Appeals), Customs & Central Excise, Kanpur.

2. Brief facts of the case are that the appellant is a proprietorship concern and was running classes for imparting knowledge and proficiency in American English, a job oriented course. A show cause notice dated 27/7/2009 was issued on the institute and its proprietor Sri Manish Malhotra as it appeared to Revenue that appellant is providing taxable service under the classification of Commercial Training and coaching service invoking extended period of limitation for the period 2006/2007 and 2007/2008. It was proposed to demand Rs.2,22,898/- towards tax alongwith interest and penalty was proposed under Section 76,77 and 78 of the Act. The show cause notice was adjudicated on contest by the appellant and the proposed demand was confirmed alongwith interest and further equal amount of penalty was levied under Section 76 and Section 78. Further, penalty of Rs.1,000/- was imposed under Section 77 of the Act.Being aggrieved, the appellant preferred appeal before Ld. Commissioner (Appeal) on the ground that they are imparting training in American English which is a job oriented course or a vocational course and as such, they are exempted under Notification No. 24/04-ST. The ld. Commissioner (Appeals) considering the issue as to whether the

service provided by the appellant falls under the category of "Vocational Training Institute" decided in favour of the Revenue relying on the CBEC Circular No. 107/01/2009-ST dated-28/1/2009 wherein it was clarified that Vocational Training Institute referred to in Notification No.24/04, should provide training or coaching for imparting skill to enable the trainee to seek employment or self-employment directly after such training or coaching. In the said circular, it was further clarified that on a careful reading of the definition, only such institutes that impart training to enable the trainee to seek employment or self-employment are eligible. Courses like general course on improving communication skill, personality development, effective group discussion or personal interview, general grooming and finishing etc. only improve the job prospects of a candidate and had been specified in the condition of the notification. The Ld. Commissioner however, on the issue of penalty observed that "I notice that the language of Notification is little bit confusing and the matter gets clarified only when circular dated 28.01.2009 is considered". They have crossed the thin line between the taxability and non-taxability. The fact that English is not a foreign language is also not known to a lay man. Therefore, in our opinion, there appears a set of confusion if the facts are not clarified properly i.e. why the Board has given a clarification on the Circular dated-28/8/2009. It was further, held that there was bonafide belief on the part of the appellant and they were entitled to the exemption granted under Notification No. 24/04-ST. Accordingly, it was held that the issue being interpretational in nature, there was reasonable cause of failure in not paying the tax and complying with other compliances like obtaining registration and filing of Returns. Accordingly, the penalty imposed under Section 76, 77 and 78 have been set aside.

3. Being aggrieved, the appellant is before this Tribunal. It is urged that there is no contrary finding that the course in American English conducted by the appellant is not a Vocational course. Further, the stands of the appellant to get employment with call centres and BPO etc. which works for American clients, the Ld. Counsel also draws our attention to the clarificatory Circular No. 59/8/2003-ST dated-20/06/2003 wherein at para 2.2 it has been clarified with respect to exemption of coaching centres in vocational training, foreign language institutes have been included in vocational coaching and as such, declared to be exempted. In this view of the matter, it is submitted that the appellant had a bonafide belief that their activity is not chargeable to Service Tax. Further, it has been held by Commissioner (Appeals) that the issue is interpretational and there is no malafide on the part of the appellant and deleted the penalty. The Ld. Counsel argues that under such circumstances, extended period of limitation is not applicable and relied on the ruling of this Tribunal in the case of R.N. Singh Vs. CCE -2012 (28) STR 2013 wherein in these respects where the issue is interpretational and no penalty was imposed by the Adjudicating authority giving benefit of doubt, it was held that the extended period of limitation is not attracted. The Ld. Counsel also relies on the ruling of this Tribunal in the case of Apex Institute of English Vs. CCE-2019 (21) STR 176 wherein the Division Bench after holding that English is foreign language and common course of English is Vocational Course, allowed stay application. Accordingly, the Ld. Counsel prays for allowing their appeal setting aside the impugned order.

4. Ld. A.R. for the Revenue relies on the impugned order.

5. Having considered the rival contentions, we hold that a course in American English is definitely a job oriented course and will fall under the Vocational Training. However, in view of the finding of the Commissioner (Appeal) that the issue is interpretational in nature and Revenue has also woken up after the clarificatory circular dated 28/1/2009, accordingly, we hold that the extended period of limitation is not invocable and accordingly allow the appeal, we set aside the Service Tax confirmed in the impugned order. The penalties under Section 76, 77 and 78 also stands deleted and set aside by the order of Commissioner (Appeal). Thus the appeal is allowed.

(Operative part of the order already pronounced in the Open Court)

Sd/-

(H.K.THAKUR)
MEMBER (TECHNICAL)

Sd/-

(ANIL CHOUDHARY)
MEMBER (JUDICIAL)

mm

प्रमाणित प्रति / Certified True Copy
15.3.16
सहायक पंजीकार / Asstt. Registrar
सीमाशुल्क, उत्पादशुल्क एवं सेवा कर अपील अधिकरण / (C.E.S.T.A.T.)
38, एम. जी. मार्ग, इलाहाबाद-211001
38, M. G. MARG, ALLAHABAD-211001