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CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
38,MG Marg Civil Lines,Old Red Building,Allahabad-211001
Regional Branch, Allahabad

Dated: 29/11/2016

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. ST/A/71070/2016-CU[DB] dated 26/10/2016

I am directed to transmit herewith a certified copy of order passed by the Tribunal under section 01(5) of the Finance Act, 1994 relating to Service Tax Act, 1994.

Asstt. Registrar

Application	Appeal	Name and Address of Appellant
1	ST/52269/2015	A B C Classes 2nd Floor, Baldev Plaza, Golghar GORAKHPUR UP
		Name and Address of Respondent
2		C.C. & C.E. & S.T.-ALLAHABAD 38...M G MARG...CIVIL LINES, ALLAHABAD,UTTAR PRADESH-211001

Copy To

3Advocate(s) / Consultant(s):

K.VAISH &CO
KRISHNA JANKI PALACE,35-C,RAMPUR GARDEN,BAREILLY
TOWER A, THE CORENTHUM, SECTOR-62,NODIA,U.P.201301

4Bar Association, CESTAT, Allahabad

5Director 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 LAWCRUX Advisors Pvt. Ltd., LAW House, 1-8, Sector-10, Faridabad 121003 (Haryana)
10 TaxIndiaOnline.com Pvt. Ltd., 2nd Floor, Vasant Arcade, Vasant Kunj, New Delhi - 110070
11 Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Hyderabad – 38
12 The ICFAI society, 52, Nagarjuna Hill,Punjagutta Hyderabad.-500082
13 M/S Knowledge Processing Pvt. ltd.(taxmanagementindia.com),FF-19,1st Floor,Cross River Mall,CBD Ground,Near Karkardooma Court,Delhi-110032
14 C.D.R. 15 Office Copy 16 Guard File

Asstt. Registrar

05-12-16

ISSUED ON

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH : ALLAHABAD
COURT No. 2

APPEAL No. ST/52269/2015-CU[DB]

(Arising out of Order-in-Original No. ST (184/2013)06 of 2015 dated 02/03/2015 passed by Commissioner of Central Excise & Customs, Allahabad)

For approval and signature:

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

1.	Whether Press Reporter may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	No
2.	Whether it would be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	Yes
3.	Whether their Lordships wish to see the fair copy of the order?	Seen
4.	Whether order is to be circulated to the Department Authorities?	Yes

M/s ABC Classes **Appellant**

Vs.

Commissioner of Central Excise, Allahabad **Respondent**

Appearance:

Shri Kapil Vaish, Chartered Accountant, for Appellant
Shri Rajeev Ranjan, Joint Commissioner, (AR), for Respondent

CORAM:

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

Date of Hearing & Date of Decision: 26/10/2016

FINAL ORDER NO. 71070/2016

Per: Anil Choudhary

The present appeal is filed by the appellant, M/s ABC Classes, herein is a Coaching Institute, a partnership firm providing the service of education/coaching under the classification of 'commercial training and coaching service'. They are in appeal against Order-in-Original No. ST (184/2013)06 of 2015 dated 02/03/2015 passed by Commissioner of Central Excise & Customs, Allahabad. The issue in this appeal is whether the books of accounts maintained by the appellants and their Service Tax Returns filed time to time could be rejected or have been rightly rejected and the demand raised on the basis of statements under Section 14 of the Central Excise Act, 1994, whether the same is proper and/or whether the appellant have properly disclosed their turnover and maintained proper records which could not have been rejected on account of some variation noticed with the statement recorded by the partners of the appellant, their employees and students.

2. The brief facts are that on inspection took place in the premises of the appellant on 09-09-2010. In the said inspection some records were resumed for further verification and statements were also recorded under section 14 of the

Central Excise Act, 1994. The statement of partner, Mr. Rajneesh Singh, was recorded along with the statement of Mr. Durgesh Srivastava, the marketing executive, who was working for the last 12 months. As per the statement of Mr. Rajneeesh Singh, who was shown 20 fee receipts issued during April, 2009 to December, 2009 and asked to explain the entries of any of them,but he could not explain. Further, in his next statement on 11-2-2011 he stated in response to question number 18 that during the current financial year 2010-11, total number of students is approximately 649. He also stated year-wise fee structure for the period 2008-09, 2009-10 & 2010-11 for the various courses conducted by them namely, Target Batch, Vision Batch, Focus Batch, AIEEE Batch, PMT Batch. It is further alleged in the Show Cause Notice that another partner of appellant, Mr. Praveen Singh was shown fee receipts for the year 2009-10 and asked to give the batch of the students on which he expressed his inability as the fee receipt did not provide the information like batch number, serial number of the installment. In response to Question No. 8, about number of students during the period 2008-09 to 2011-12, he stated some numbers but also stated that this may not be the exact as he is making a rough estimate. In the light of the statements of the key persons and or perusal of record and documents resumed, it appeared that there was no set pattern for filling and issuing fee receipts. As per Revenue there was discrepancy as, registration number of the service provider was missing on the Fee Receipt, secondly value of taxable service provided or to be provided was incomplete, thirdly the columns in respect of value/amount charged were deliberately left blank due to which the actual value of taxable services could not be determined and fourthly the details of Service tax paid or payable had not been mentioned. It, further, appeared that there have been violation of Sub-rule 1 of Rule 4A of the Service Tax Rules, 1994, as the appellant have not maintained proper account evidencing the part or final fee paid by the students. The method of accounting of fee receipts/invoice was manipulated and receipt/invoices were marked by incomplete information. It is further alleged that fee/invoice do not have running serial number and the fee receipt issued do not have signature of any one of the partners or any of their Authorized Representative. Fee receipts issued during academic session 2010-11 for PMT Classes, were on *'white sheet'* which was hand written. Although original and duplicate copy of fee receipts were found to contain information, but the same was not mentioned in their office copy or the third copy. During search several documents like DSR expenditure (Daily Sales Report, cashbook pertaing to a single date, that is 05-08-2010) which shows receipt of Rs.1,41,200/- in cash and Rs.10,000/- through Cheque from 13 students. Only one fee receipt dated 05-08-2010 Rs.7,000/- for PMT Target

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appeared to have been issued and that too in the name of Mr. K. M. Tiwari, whose name was not found in the list in the DSR and accordingly it appeared that for the Financial Year 2~~0~~009-10, all the receipts are not properly recorded. Accordingly, it appeared to Revenue that the turnover shown or the gross receipt shown, was not credible and was liable to be rejected and the accounts maintained by the appellant are not reliable. Further, the fee receipt books resumed at the time of search were found incomplete only for the year 2009-10. As such, to ascertain the exact number of students from fee receipt, list containing the name of students in alphabetical order was prepared and it was found that number of students as per their fee receipt was 810 as detailed in Annexure (J) to the Show Cause Notice. For the year 2008-09 the average numbers of students as stated by partner Praveen Kumar Singh, in his statement dated 22-02-2011 was 617. Accordingly, as per the statement, 649 students were taken for the period 2010-11. The fee structure is stated by Mr. Rajneesh Singh for the respective years in answer to Question No. 18 in the statement dated 11-02-2011, was taken into consideration while calculating the taxable value of the services. Accordingly, the Revenue proposed to reject the Books of Accounts and estimated the turnover or gross receipts on the basis of statements and accordingly found that the appellant have paid Service tax short, by not disclosing their actual turnover or gross receipts. Accordingly, in the Show Cause Notice dated 18-10-2013, it was proposed to demand Service tax short paid Rs.55,51,706/- along with interest and further penalty was proposed under Section 76, 77 & 78 of the Finance Act, 1994. The appellant appeared and contested the Show Cause Notice by filing their reply and the Show Cause Notice was adjudicated vide impugned Order-in-Original No. ST (184/2013)06 of 2015 dated 02/03/2015 wherein the proposed demand was confirmed along with interest and further penalty of equal amount was imposed under Section 78. Further penalty of Rs.10,000/- under Section 77(2) of the Finance Act, 1994 was imposed.

3. Being aggrieved the appellant is before this Tribunal. The ld. Counsel for the appellant, Shri Kapil Vaish, Chartered Accountant, states that the appellant have maintained proper Books of Account all throughout. Further, their Books of Accounts are duly audited by a Chartered Accountant as required under the provisions of the Income Tax Act and proper audit reports are obtained and the same are filed with the Income Tax Department etc. He, further, invited our attention to a chart prepared as per the statements of various persons, as regards the number of students. Out of the statements, connected to five persons, including the partner and one of the students and Marketing Executive of the appellant the maximum figures stated have been considered

by the Revenue for the purpose of estimation. The appellant have further demonstrated at page 19 of the Compilation filed in the course of hearing that the gross receipts or turnover for the coaching service is in consonance as per the Books of Accounts maintained in the ordinary course of business; there is no discrepancy on comparison with the ST Returns and the returns filed under various other law's including the Income Tax Act. He, further, points out from the statement of Mr. Praveen Singh, partner, which is contained at page 71 of the Appeal Book wherein answer to Question No. 3 it is stated that they maintain proper records like Attendance Register, Salary Register, Fee Receipts, Identity Card issued to students. Further, on the question that - what is the basis of issue of Identity Card to the students. It has been stated that they also conduct free classes. Students do not come in one lot. Some students come to attend/or avail free classes and thereafter some students take admission. Further, the admitted and free students are given classes together. This continues during the first 2 to 3 months of the new session. Thereafter, on the basis of fee receipts, Identity Cards were issued. In answer to Question No. 8 wherein it was asked about the details of enrolled students in each year batch wise/course wise, wherein he stated as follows: -

Period	IIT (Target) +AIEEE	PMT Target	Focus	Vision
2008-09	(425 – 450)	--	(80 – 100)	(80 – 100)
2009-10	(450 – 500)	--	(80 – 100)	(80 – 100)
2010-11	(400 – 450)	45 – 50	(60 – 80)	(100 – 120)

It was also stated that ~~fee~~ figure stated above is as ~~in~~ per his memory which is approx and is not exact figure.

4. He further stated that this is approx data and also stated that as per the actual receipts, record in Books of Account are maintained and returns were filed with the Service Tax Department. He, further, states that Service tax returns ~~all~~ are filed on the basis of gross fee received. Further, on a query in Question No. 10, it was stated that students do not deposit the total fee in one go. They pay in installments. Accordingly, there will be more than one receipt in the name of a student. Normally students pay in two or three installments but some students pay in more number of installments. Further, on a query that the fee receipts of the appellant do not show maintenance of record in a proper manner, it ~~is~~ was stated that actually students in free class and regular class study together. In the receipt, name of the student & parents name is filled in, along with date and the amount received. As per the fee receipt available with the student Identity Card is issued. Many students are allowed concession in the fee. On further query whether in the fee receipt it is not important to mention the number of

installment(s). It was answered that they do not mention the number of installments but on the basis of data mentioned in the receipt Register, they are able to make out the installment. Due to the free students, during the initial part of the session, they are unable to know the exact number of fee paying students. Further, on query in Question No. 19 - that in the fee receipts issued, all columns are not filled deliberately; it was answered that this happens due to the concept of free classes. Both the regular students and the free students attend the class together. The students of AIEEE course and IIT are taught together and it is subsequently decided which student will go in which batch. Further, in response to question whether it is not natural when the student deposits the fee, he knows or is informed that the fee he is depositing is for a particular course which he wants to study. In answer, it was stated that as all the matters cannot be decided at the admission counter. A student pays the first installment and is put in the batch. Subsequently, as per aptitude and progress, the batch is re-allotted to the students. Further, on query in Question No. 22 - as the fee of the student is the responsibility of his guardian; it was stated that the guardian is concerned with the quantum of fee and the batch or type of course which his ward is going to attend. Further, in response to query whether if any person or Government agency wants to know the receipt batch wise, course wise, number of students for a

Avr.

particular financial year, how would you tell. It was answered that they may not be able to tell batch wise/course wise number of students. But total number of students and the gross fee received, which will be as per the records maintained by them. Further, in Question No. 27, query was made that as per the fee receipts of students starting with the Page 36, students were randomly selected and as per the receipt book, from 21 students fee collected is Rs.3,000/- to 5000/-, from 10 students Rs.5,000/- to 10,000/- from 3 students Rs.10,000/ to 20,000/- & from 2 students Rs. 20,000/-. Thus the average comes to Rs.7,340/- per student which does not match with the fee structure of the appellant and a doubt was raised on the records maintained by the appellant. In answer, the partner stated that whatever be the fee structure they have kept; they usually do not get the said amount and whatever they get they maintain proper records.

5. The ld. Counsel also draws our attention to the statement of the Marketing Executive, Shri Durgesh Srivastava, recorded on the date of search wherein he has stated that they are properly registered with the Service Tax Department for the last four years and have been filing their six monthly returns regularly. He has further stated that all the students who study in their Coaching/Institute do not pay fee at the same rate or the same amount. Some students are meritorious but poor in which case they are allowed

rebate in the fee. Fees are normally paid by the students in cash and sometimes in cheque and for every receipt proper acknowledgement of fee receipt is issued. The ld. counsel further points out that the ld. Commissioner have not found any discrepancy and/or mismatch in the records maintained by the appellant, save and except the variation with the oral statements. In spite of voluminous records examined and resumed by the Revenue the authorities have not found a single instance of any receipt voucher found unrecorded in the Books of Accounts maintained. He, further, urges that under the facts and circumstances; their Books of Accounts and the returns filed could not have been rejected and/or brushed aside and the best judgment assessment has been made on some illusory basis. He, further, states that even otherwise the best judgment assessment made by the ld. Commissioner have got no legs to stand being a wild guess work, without any proper basis and accordingly the demand and penalties are fit to be set aside. He, further, states that Revenue have not brought any corroborative evidence save and except relying on the statements which cannot form the sole basis of a best judgment assessment under the facts and circumstances.

6. The ld. AR relies on the impugned order.

7. Having considered the rival contentions, we observe that no discrepancy has been found out by the Revenue during investigation and or at the time of adjudication in the Books of Accounts and records maintained by the appellant, in the ordinary course of business. Further, we find that the statements have been recorded in a flimsy manner without informing the persons, that whatever they state even if it is by approximation, the same will be used against them, for making a best judgment assessment, or in any proceedings under the Act. Further, we find that even the instances quoted in the Show Cause Notice, like the fee receipt in the case of one Saddam Husain S/o Abdul Hameed, a student of the appellant, is found to be properly recorded in the Books of Accounts maintained by the appellant. We, further, find that the persons who have stated the number of students in the statement, have also clarified the same that the figures are based on approximation and the exact figures has to be taken from the records maintained by the Institute. The said approximate figures cannot form basis of rejection of the Books of Accounts and estimation of turnover by way of wild guess work. There is absolutely no evidence on record to prove that appellants received any amount over and above ~~which~~ what has been recorded in Books of Account. Even in the statements recorded by Revenue there is no such averment/confession. Accordingly, we find there is no proper basis adopted by the revenue for rejecting the books of

account and the Returns filed, and resorting to best judgment assessment. In this view of the matter we allow this appeal and set aside the impugned order. The appellant will be entitled to consequential benefits, if any, in accordance with law. **The copy of the order be given dasti.**

(Dictated and pronounced in Court)

Sd/-
(ANIL G. SHAKKARWAR)
MEMBER (TECHNICAL)

Sd/-
(ANIL CHOUDHARY)
MEMBER (JUDICIAL)

Member (Technical)

Ansari

प्रमाणित प्रति / Certified True Copy
सहायक पंजीकार / Asstt. Registrar
सीमाशुल्क, उत्पादशुल्क एवं सेवा कर अपील अधिकरण / (C.E.S.T.A.T.)
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