FAX : 0532-2400149

REGISTERED / AD

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

Dated: 20/03/2017

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/70268/2017-SM[BR] dated 08/03/2017

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/551/2011	**Fututech Computer Services Pvt Ltd** Meerut College Crossing,163,civil Lines MEERUT-UP
		Name and Address of Respondent
2		C.C.E. & S.T.-Meerut-i EXCISE CHOWK...UNIVERSITY ROAD,MANGAL PANDEY NAGAR, MEERUT, UTTAR PRADESH-250005

Copy To
3Advocate(s) / Consultant(s):

Vaish Associates, Advocates
FLAT NO.1105, 11TH FLOOR,
TOLSTOY HOSUSE, TOLSTOY MARG,
NEW DELHI,

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 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

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

APPEAL No.ST/551/2011-ST[SM]

(Arising out of Order-in-Appeal No. 199-CE/MRT-I/2010-11 dated 30/08/2010 passed by Commissioner of Central Excise & Customs (Appeals), Meerut-I)

For approval and signature:

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

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 Fututech Computer Services Pvt Ltd. — **Appellant**

Vs.

Commissioner of Central Excise & S.T., Meerut-I — **Respondent**

Appearance:

Shri Vishal Kumar, Advocate — for Appellant
Shri D.K. Deb, Assistant Commissioner (AR), — for Respondent

CORAM:

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

Date of Hearing : 08/03/2017
Date of Decision : 08/03/2017

FINAL ORDER NO.: 70268/2017........

CUSTOMS EXCISE & SERVICES TAX APPELLATE TRIBUNAL
सत्यमेव जयते

Per: Anil Choudhary

The present appeal is filed against Order-in-Appeal No. 199-CE/MRT-I/2010-11 dated 30/08/2010 passed by Commissioner of Central Excise & Customs (Appeals), Meerut-I.

2. The issue in this appeal by the appellant is whether under the facts and circumstances, the show cause for extended period of limitation is tenable or not. The brief facts as appearing from the show cause notice dated 25/08/2009 is that during the scrutiny/checking of records of the appellant the Central Excise Audit Team during November, 2007 for the period September, 2004 to September, 2007. It appeared that the appellant have not paid service tax on computer training. Further, it is stated in the show cause that on scrutiny of ledger the audit team observed that the appellant has received amounts on account of different CTP and other projects undertaken by NIIT, in respect of which services are provided by the appellant as franchisee. Accordingly, service tax for the extended period was demanded alleging that the appellant concealed the details and particulars of taxable service from the revenue. The proposed demand of Rs.04,99,593/- was made along with interest and penalty. The said demand was adjudicated on contest and confirmed by the Assistant Commissioner along with penalty of equal amount under Section 76 and 78 of the Act. Being aggrieved, the appellant had preferred appeal before learned Commissioner (Appeals) who was pleased to uphold

the demand but was pleased to set aside the penalty under Section 78 of the Act. Being aggrieved, the appellant is before this Tribunal.

3. The learned Counsel for the appellant have taken me through the exemption provisions under Notification No.9/2003–ST, wherein along with Vocational Training and Recreational Training, Computer Training Institute was also specifically exempted providing coaching or training relating to computer software or hardware. Subsequently, by Notification No.10/2003–ST and 1/2004–ST, such exemption was extended specifically till 29th of February, 2004 and also 30th of June, 2004. Subsequently vide Notification No. 24/2004 dated 10/09/2004, the exemption was again provided to vocational training Institute or recreational training Institute, there being no mention of a Computer Training Institute, nor specifically excluding a computer training Institute. The said Notification No.24/2004 was amended by subsequent Notification No.19/2005–ST dated 07th June 2005, with effect from 16th June 2005, clarifying that a computer training Institute is no longer entitled to exemption under the Notification No.24/2004–ST. The learned Counsel has further pointed out that the said circular/notifications were interpreted by this Tribunal in several judgments and it was held that, as computer training also leads to placement and/or getting jobs to the trainees, computer training Institute also continues to qualifying for the exemption under the Vocational Training Institute. The law was finally settled by Hon'ble Supreme Court vide their judgement dated 13/09/2010 in the case of CCE versus Sunwin Technosolution Pvt. Ltd. reported at 2011 (21)

S.T.R. 97 (SC), wherein the Apex Court after examining all the notifications held that as Notification No.19/2005-ST was clarificatory in nature. Thus, the computer training institutes, no longer enjoy exemption with effect from 01/07/2004 or 10/09/2004 when exemption was specifically continued only for recreational training and vocational training Institute. Under the admitted fact that there is no case of suppression or contumacious conduct, and the issue is wholly interpretational and accordingly, he states that the extended period of limitation is not attracted and he prays for setting aside the demand and the penalties confirmed.

4. The learned A.R. for revenue relies on the impugned order and the allegations in the show cause notice.

5. Having considered the rival contentions, I find that no case of suppression of facts with intent to evade duty or tax is made out, nor any case of ~~contributious~~ contumacious conduct is made out on the part of the appellant. In this view of the matter, I hold that the extended period of limitation is not attracted. Accordingly, the impugned demand, interest and penalties are set aside. The appellant is entitled for consequential benefits, in accordance with law.

(Dictated in Court)

-Sd/-
(ANIL CHOUDHARY)
Member (JUDICIAL)

प्रमाणित प्रति / Certified True Copy
23/03/17
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