CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
BANGALORE

REGIONAL BENCH - COURT NO. 1

Service Tax Appeal No. 1695 of 2010

(Arising out of Order-in-Appeal No. 13 to 15/2010 – ST (COMMR.) dated 31.03.2010 passed by the Commissioner of Central Excise and Customs, Thiruvanathapuram.)

M/s. Brillliance College,
S.S. Kovil Road,
Thampanoor,
Trivandrum,
Kerala – 695 001.

Appellant(s)

VERSUS

Commissioner of Central Excise,
T.C.No. 26/334, Press Club Road, ICE Bhavan,
Trivandrum – 695 001.

Respondent(s)

With

Service Tax Appeal No. 1696 of 2010

(Arising out of Order-in-Appeal No. 13 to 15/2010 – ST (COMMR.) dated 31.03.2010 passed by the Commissioner of Central Excise and Customs, Thiruvanathapuram.)

M/s. Brillliance College,
S.S. Kovil Road,
Thampanoor,
Thiruvananthapuram

Appellant(s)

VERSUS

Commissioner of Central Excise,
T.C.No. 26/334, Press Club Road, ICE Bhavan,
Trivandrum – 695 001.

Respondent(s)

And

Service Tax Appeal No. 1697 of 2010

(Arising out of Order-in-Appeal No. 13 to 15/2010 – ST (COMMR.) dated 31.03.2010 passed by the Commissioner of Central Excise and Customs, Thiruvanathapuram.)

M/s. Brillliance College,
S.S. Kovil Road,
Thampanoor,
Thiruvananthapuram.

Appellant(s)

VERSUS

Commissioner of Central Excise,
T.C.No. 26/334, Press Club Road, ICE Bhavan,
Trivandrum – 695 001

Respondent(s)

APPEARANCE:

Mr. Kuriyan Thomas, Advocate for the Appellant

Mr.M.A. Jithendra, Asst. Commissioner (AR) for the Respondent

CORAM: HON'BLE DR. D.M. MISRA, MEMBER (JUDICIAL)
HON'BLE MRS R BHAGYA DEVI, MEMBER (TECHNICAL)

Final Order No. 20657 - 20659 /2024

DATE OF HEARING: 12.08.2024
DATE OF DECISION: 12.08.2024

PER : DR. D.M. MISRA

These three appeals are filed against respective Orders-in-Original No.13-15/2005 dated passed by Commissioner of Central Excise and Customs Trivandrum.

2. Briefly stated that the appellants are engaged in providing taxable services under the category of "Commercial Training or Coaching Services" during the relevant period 01.07.2003 to March 2009 . The appellant was issued with three show-cause notices for the period April 2003 to March 2009 alleging short payment of service tax of Rs.96,95,342/- (April 2003 to March 2007), Rs.39,37,360/- (April 2007 to March 2008) and Rs.44,22,548/- (April 2008 to March 2009) as they failed to include the value of the study materials in providing commercial training or coaching service during the said period. On adjudication, the demands have been confirmed with interest and penalty. Hence, these appeals.

2. At the outset, the learned advocate for the appellant submits that the appellant are engaged in providing "Commercial Training or Coaching Centre Service" along with sale of various study materials separately from their bookshop and other outlets spread over throughout the state. He submits that the appellant is a proprietorship concern established somewhere in the year 1996 as a publication firm for printing textbooks, guides, magazines etc. They have distributed these publications through various book shops throughout the Kerala; later in the year 2000, they have started coaching institutes under the same name as "BRILLIANCE COLLEGE". He submits that coaching was only their side activity, whereas sale/distributions of various books in Kerala through book stalls has been their main business. During the period in question, 2003-2004, 2005-2006, 2006-2007 covering the first show-cause notice, they have shown a consolidated figure of sale of books and income on account of training through correspondence courses and printing of books, in their profit and loss account reflected in the balance sheet. For the subsequent years, they have shown sale of books separately as an income and training, correspondence course etc. also shown separately. For the mistakes incurred in the initial years of preparation of balance sheet, later, after receipt of the first show-cause notice they have submitted along with their reply to the balance sheet in support of their arguments that the value of coaching services did not include the sale of books and activities separately carried out of sale of books through their

outlets spread over throughout the Kerala. Further, he submits that the subsequent balance sheet even though did not reflect a consolidated figure of sale of books with coaching services; however, Department considered the sale of books as part of the coaching services, demanded service tax on the total value under the head 'commercial training or coaching service' including the sale of books. He submits that in their reply as well as before the learned Commissioner, they never claimed exemption under Notification No.12/2003-ST dated 20th June 2023 for the supply of study materials to students in rendering commercial training or coaching service; their claim all along was not to include the value of sale of books in the gross value of the commercial training or coaching service provided by the appellant as it was a separate activity. Further, he submits that the error committed in the balance sheet of the 2004-05 and 05-06, 06-07 have been justified by production of trial balance sheet of the respective years along with the Chartered Accountant's certificate. He submits that during the adjudication proceedings, copies of the invoices, sale of books as well as invoices pertaining to commercial training or coaching services rendered during the period have been submitted. The learned Commissioner has not considered any of these evidences and confirmed the demand without considering the value of sale of books an activity independent of rendering of services under the taxable category of 'Commercial Coaching or Training services". The learned advocate for the appellant referred to the sample copies of invoices included with the paper book indicating sale of books as well as 'fee receipts' collected from the students who received coaching from the appellant's during the relevant period. Besides, he also placed certified copies of the trial balance sheet along with relevant documents to show that the value of books sold has been wrongly included in the total income for the earlier period 2004-05 to 2006-07.

3. Learned AR for the Revenue reiterated the findings of the learned Commissioner.

4. Heard both sides and perused the records.

5. The short issue involved in the present appeals for consideration is whether the value of the books / study materials supplied by the appellant during the relevant periods be considered as a part of the gross value of commercial coaching or training services rendered during the said period.

6. The undisputed facts are that the appellant were engaged in providing taxable services under the category of 'Commercial training or coaching service' throughout the period in dispute. Also, it is an admitted fact that they are a publication house, operating throughout the state of Kerala publishing various study materials, magazines, guides etc. commencing from the year 1996. It is the case of the appellant that there had been

mistake in the balance sheet covering the period 2003-04 to 2006-07, wherein in each year they have shown a consolidated figure of income received from commercial training or coaching service and the income from sale of guides, magazines, etc. effected from their bookstalls. The Department had issued the first show-cause notice considering the sale of books as a part of their rendering of commercial training or coaching centre service. For the subsequent years, even though, they have shown separately the income from commercial training or coaching service and income from sale of books, show-cause notices were issued to them for the period 2007-08 and 2008-09 on the value of sale of books, considering the same also a part of the rendering of commercial training or coaching centre service alleging that the appellant failed to satisfy the condition of Notification No.12/2003-ST dated 20.06.2003.

7. Analysing the submissions along with evidences submitted, we find that before the learned Commissioner though the evidences like Trial Balance Sheet duly certified by a Chartered Accountant for the period 2003-04 to 2006-07, sample copies of sales invoices of magazines, books, guides etc. evidencing sale of publication materials and fee receipts indicating consideration for services rendered on account of commercial training or coaching service to establish both activities i.e. of sale of books and coaching service was separate, but the same were not considered by the adjudicating authority. Solely on the basis of

the mistake of showing a consolidated amount of income for services and sale of books in the balance sheet, for the initial years 2003-04 to 2006-07, the Commissioner has confirmed the demand.

8. In this backdrop, considering the evidences produced before the Commissioner as well as before us, we find that the sale of books was a separate activity and carried out by the appellant from same or different locations/outlets and it has no connection with the rendering of 'Commercial Training or Coaching Centre Service'. The fees collected from the students do not indicate any such collection of value of materials separately in the respective receipts without including its value in the service. In absence of any such evidence, clubbing the value of the sale of books carried out from different premises or from the outlets from where the services of 'Commercial Training or Coaching central service' rendered with the value of commercial coaching service in demanding service tax cannot be sustained. In the result, the impugned order is set aside and appeals are allowed with consequential relief, if any, as per law.

(Order dictated and pronounced in Open Court.)

(D.M. MISRA)
MEMBER (JUDICIAL)

(R BHAGYA DEVI)
MEMBER (TECHNICAL)

GB/Raja..