CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL

BANGALORE

Regional Bench COURT-2

Service Tax Appeal No.21982 of 2018

[Arising out of the Order-in-Appeal No.MLR-EXCUS-000-APP-MSC-138-2018-19 dated 26.09.2018 passed by the Commissioner of Central Tax (Appeals), Belgaum]

Manipal Academy of Higher Education, **.......Appellant**
No.415/1, 57/1C,
Madhav Nagar,
Manipal,
Udupi District – 576 104

VERSUS

Commissioner of Central Tax (Appeals), **.....Respondent**
No.71, Club Road,
Belgaum – 590 001.

WITH

(i) Service Tax Appeal No. 21983 of 2018 (Manipal Academy of Higher Education)

[Arising out of the Order-in-Appeal No.MLR-EXCUS-000-APP-MSC-140-2018-19 dated 26.09.2018 passed by the Commissioner of Central Tax (Appeals), Belgaum.]

(ii) Service Tax Appeal No. 20051 of 2020 (Manipal Academy of Higher Education)

[Arising out of the Order-in-Appeal No. MLR-EXCUS-000-APP-MSC-070-2019-20 dated 05.11.2019 passed by the Commissioner of Central Tax (Appeals), Belgaum.]

Appearance:

Mr. Disha Gursahaney, Advocate for Appellant
Mr. M.A. Jithandra, Authorized Representative for Respondent

Coram:

Hon'ble Mr. P.A. Augustian, Member (Judicial)

Hon'ble Mr. Pullela Nageswara Rao, Member (Technical)

<u>Final Order Nos. 21653-21655 / 2024</u>

Date of Hearing: 03.05.2024

Date of Decision: 29.10.2024

Per: P.A. Augustian

The issue in the present appeals is whether the bond amount recovered from employees leaving University before notice period, whether the amount forfeited from the students, who discontinue the course midway can be considered as liquidated damages or as a service under the category of declared service. As per the impugned orders, Adjudication authority had confirmed the demand along with interest and imposed penalties under the provisions of the Finance Act, 1994. Aggrieved by the said orders, following appeals were filed before the Tribunal.

Sl. No.	1	2	3
Appeal No.	ST/21982/2018	ST/21983/2018	ST/20051/2020
Period	July 1, 2012 to Sept 30, 2015	July 1, 2012 to Sept 30, 2015	October 1, 2015 to June 30, 2017
S.Tax	Rs. 1,24,32,835	Rs. 14,33,556	Rs. 32,02,954

2. Since the issued involved in all the 3(three) appeals is common they are being decided by this order.

3. When the matter came up for hearing, learned Counsel for the Appellant draws our attention to the definition of 'service' and 'declared service', under the Finance Act, 1994;

> 66B(44); "Service" means any activity carried out by a person for another for consideration, and includes a declared service, but shall not include –
>
> an activity which constitutes merely,-
>
> (i) a transfer of title in goods or immovable property, by way of sale, gift or in any other manner; or

(ii) such transfer, delivery or supply of any goods which is deemed to be a sale within the meaning of clause (29A) of Article 366 of the Constitution; or

(iii) a transaction in money or actionable claim

(a) a provision of service by an employee to the employer in the course of or in relation to his employment;

(b) fees taken in any Court or tribunal established under any law for the time being in force

66E. The following shall constitute declared services, namely:-

(a) renting of immovable property;

(b) construction of a complex, building, civil structure or a part thereof, including a complex or building intended for sale to a buyer, wholly or partly, except where the entire consideration is received after issuance of completion certificate by the competent authority.

3. The learned Counsel further submits that the issue is covered by the judgment of Hon'ble High Court of Madras in the matter of **GE T&D India Ltd. [2020 (1) TMI 1096-Madras High Court],** wherein it is held that:-

"10. The provisions of Section 66E(e) appear to have given rise to some ambiguity, on this very issue, clarified by the Central Board of Excise and Customs (CBEC) in CBEC's Guidance Notes dated 20.06.2012. At para 2.9.3 the Board states as follows:

2.9 Provision of service by an employee to the employer is outside the ambit of service.

2.9.3. Would amounts received by an employee from the employer on premature termination of contract of employment be chargeable to service tax?

No. such amounts paid by the employer to the employee for premature termination of a contract of employment are treatable as amounts paid in relation to services provided by the employee to the employer in the course of employment. Hence, amounts so paid would be chargeable to service Tax. However, any amount *paid for not joining a competing business would be liable to be taxed being paid for providing the service of forbearance to act*

11. The query raised relates to a contra situation one, where amounts have been received by an employee from the employer by reason of premature termination of contract of employment, and the taxability thereof. The Board has answered in the negative, pointing out that such amounts would not be related to the rendition of service. Equally, so in my view, the employer cannot be said to have rendered any service per se much less a taxable service and has merely facilitated the exit of the employee upon imposition of a cost upon him for the sudden exit. The definition in clause (e) of Section 66E as extracted above is not attracted to the scenario before me as, in my considered view, the employer has not tolerated any act of the employee but has permitted a sudden exit upon being compensated by the employee in this regard

12. Though normally, a contract of employment qua an employer and employee has to be read as a whole, there are situations within a contract that constitute rendition of service such as breach of a stipulation of noncompete. Notice pay, in lieu of sudden termination, however, does not give rise to the rendition of service either by the employer or the employee."

3. The learned Counsel also draws our attention to the Circular No. 178/10/2022-GST 03.08.2022 regarding forfeiture of salary or payment of bond amount in the event of the employee leaving the employment before the minimum agreed period and it is clarified that:-

"*7.5. An employer carries out an elaborate selection process and incurs expenditure in recruiting an employee, invests in his training and makes him a part of the organization, privy to its processes and business secrets in the expectation that the recruited employee would work for the organization for a certain minimum period. Premature leaving of the employment results in disruption of work and an undesirable situation. The provisions for* *forfeiture of salary or recovery of bond amount in the event of the employee leaving the employment before the minimum agreed period are incorporated in the employment contract to discourage non-serious candidates from taking up employment. The said amounts are recovered by the employer not as a consideration for tolerating the act of such premature quitting of employment but as penalties for dissuading the non-serious employees from taking up employment and to discourage and deter such a situation. Further, the employee does not get anything in return from the employer against payment of such amounts. Therefore, such amounts recovered by the employer are not taxable as consideration for the service of agreeing to tolerate an act or a situation."*

4. The learned Counsel submits that though the above Circular is issued under GST, as per the decision of the Tribunal in the matter of **M/s Chennai Metro Rail Vs. CC, GST and Central Excise (2023 (10) Centax 343 (Tri.-Mad),** GST Circulars is applicable even under the service tax regime. The learned Counsel further submits that the bond amounts are recovered from employees leaving the University before notice period on resignation and also from students, who had executed bond for employment with the appellant after competition of course. Such recoveries are not made for any underlying service. Bond recoveries are in the nature of liquidated damages. Recoveries are made from parting employees, who are not serving the mandated notice period at the time of their resignation from the appellant. Fee forfeiture is an amount retained from the students, who discontinue the course midway. Moreover, fee forfeited by the appellant in most of the cases, on retention of course fees is already subjected to appropriate service tax (depending upon the type of course). Even if such recoveries are considered as services, since appellant is an educational

institution, all services are exempted, as per entry 9 of the Notification No. 25/2012 dated 20.06.2012. Ld. Counsel also produced the Final Order No. 50657/2023 dated 15.05.2023 in the matter of Modi Education Foundation, where it is held that hostel services and education services are naturally bundled in the ordinary course of business, and it is an education service that gives essential services/ character to such bundle.

5. The learned Counsel also draws our attention to the following case-laws:

a) **KN Food Industries Pvt. Ltd. – 2019-VIL-731-ALH-ST**
b) **Manappuram Finance Ltd. Vs. Assistant Commissioner of Central Tax and Excise, Thrissur – (2022) 1 Centax 120 (Ker.)**
c) **Naveen Chava Vs. CCE (2024) 16 Centax 169 (Tri.-Bang.)**
d) **Chennai Metro Rail Ltd. Vs. Commissioner of GST and Central Excise (2023) 10 Centax 343 (Tri.-Mad.)**
e) **Rajcomp Info Services Ltd. Vs. Principal Commissioner, CGST and Central Excise, Jaipur (2023) 5 Centax 52 (Tri.-Del.)**
f) **CCE, Bangalore Vs. Pragathi Concrete Products (P) Ltd. – 2015-TIOL-223-SC-CX**

6. The Ld. Counsel further submits that the Appellant is rendering both taxable courses and as well as non-taxable courses and they have already paid the entire service tax on taxable courses including unrecognized course and they have discharged service tax at the time of collection of fees and submitted month wise details of the courses which are subject to service tax. If the student discontinues the course

before completing, then the Appellant refund part of the fee collected by the student and forfeit the remaining part. Thus, the Appellant who had already discharged the service tax on the gross amount is not liable to pay service tax again for the very same amount under the category of declared service and it amounts to double taxation. The Ld. Counsel relied on the decision of the **Moradabad Gas Services (2013 (31) STR 308 (Tri.Del),** wherein it is held as under:

> *"Operator paying Service Tax on MRP of SIM-cards and paying commission to distributors out of it – HELD: Collecting Service Tax on MRP of SIM-card from operator and then again on part of amount paid by operator to distributor, puts the parties to these transactions at doubly disadvantageous position – It is case where telecom operator collected money from customers on SIM-cards sold through distributor, paid Service Tax on it, and then paid distributor out of money so collected – Hence, transactions of both parties were essentially one and payment on full value of service occurred earlier than payment of commission to distributor".*

7. As regards invoking the extended period of limitation learned counsel submits that it is unwarranted under the facts and circumstances of the present case, which were all disclosed during regular Audits of the appellant.

8. Ld. Authorized representative (AR) for the Revenue reiterated the finding in the impugned order and submits that as per the finding given by the adjudication authority, various facts and documents recovered during the investigation were relied before confirming the demand as

declared service under clause (e) of Section 66E of the Act which declares 'agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act' as a taxable service. Adjudication authority noticed from resolution dated 31.07.2000 of Board of Management of the Appellant that at agenda item no 2.5, Appellant reserved certain seats in Post graduation against service agreement to overcome the shortages provided they work as tutors. As per the service agreement if the executants fail to perform the conditions, then Appellant to be compensated by paying a sum that would be incurred by Appellant for replacing the executants. For invoking the extended period, the Ld. AR produced the decision of the **Hon'ble Supreme Court in the matter of CC. Vs. M/s Bajaj Auto (2010 (260 E.L.T 17 (SC), M/s. Jubliant Enpro (P) Ltd. Vs. CC (2014 TIOL-2535 CESTAT, Delhi) M/s. Kalasagar Vs. CC (2014 TIOL-426 CESTAT, M/s Spy Kagang SA Vs. CCE, Mumbai (2009 TIOL-2274 CESTAT, Mumbai, M/s. Institute of Chartered Financial Analysis of India, Hyderabad Vs. CCE, Hyderabad (2012 TIOL 2028-CESTAT-Bang.**)

9. Heard both sides and perused the records.

10. We find that the issue is no longer *res integra*, the issue is squarely covered by the decisions/judgments cited, supra. Premature leaving of the employment results in disruption of work and an undesirable situation. The provisions for forfeiture of salary or recovery of bond amount in the event of the employee leaving the employment before the minimum agreed period or the amount forfeited from the students, who discontinue the course midway cannot be considered as liquidated damage or service under the category of declared service. It

can be considered as penalties for dissuading, to discourage and to deter such a situation.

11. In view of the above discussion we find that the appeals filed by the appellant are sustainable.

12. Accordingly, Appeal Nos. ST /21982/2018, ST/21983/2018 and ST/ 20051/2020, are allowed with consequential relief, if any in accordance with Law.

(Order Pronounced in Open court on 29.10.2024)

(P.A. Augustian)
Member (Judicial)

(Pullela Nageswara Rao)
Member (Technical)

Sasidhar