CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL

BANGALORE

Regional Bench COURT-2

Service Tax Appeal No. 20085 of 2019

[Arising out of the Order-in-Original No.MLR-EXCUS-000-COM-MS-09-18-19 dated 30.10.2018 passed by the Commissioner of Central Excise and Central Tax, Mangaluru]

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

VERSUS

Commissioner of Central Tax and Central Excise,
Mangalore Commissionerate
7th Floor, Trade centre, Bunts Hostel Road,
Mangalore, Karnataka - 575003. **.....Respondent**

WITH

Service Tax Appeal No. 20050 of 2020

[Arising out of the Order-in-Original No. MLR-EXCUS-000-COM-SP-05/19-20 dated 27.11.2019 passed by the Commissioner of Central Excise and Central Tax, Mangaluru]

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

VERSUS

Commissioner of Central Tax and Central Excise,
Mangalore Commissionerate
7th Floor, Trade centre, Bunts Hostel Road,
Mangalore, Karnataka - 575003. **.....Respondent**

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)

Final Order Nos. 21758 - 21759 / 2024

Date of Hearing: 29.11.2024

Date of Decision: 29.11.2024

Per: P.A. Augustian

The issue in the present appeal is whether the services of providing hostel and other utilities to the students of non-approved/non-recognized commercial courses by the Appellant can be classified within the scope of 'service' under section 65B(44) r/w section 65B(51) as a bundled service as provided under section 66F of the Finance Act, 1994.

2. The brief facts are Manipal Academy of Higher Education the Appellant is recognized as a deemed University by the Ministry of Human Resources and Development and University Grands Commission. The Appellant had constituent institutions comprising Medical, Dental, Engineering, Nursing, allied health, etc., which offers Bachelors and Doctoral Degrees in these specialties. The Appellant had obtained service tax registration for providing taxable service under different categories. During course of Audit by the Department, it is observed that the Appellant had entered into an agreement with Manipal Universal Learning International Mauritius in connection with developing and internationalizing higher education by providing academic support related to various branches of education to international students. Further to provide these services, they were collecting service charges from their business partner and the services provided were classified as 'commercial coaching' service by the appellant and service tax was paid on the amount received by the assessee from their clients. Further

Appellant was providing hostel and other utilities to these students for which they were collecting charges directly from the students as hostel fees and utility charges. Thus, alleging that the charges collected from the students are also under the category of 'service', proceedings were initiated to recover the service tax. Appeal No. ST/20085/2019 pertains to the period from 01.07.2012 to 30.09.2015 and Appeal No. ST/20050/2020 is for the period from October 2015 to June 2017. Thereafter Adjudicating authority classified the 'service' as a bundled service under Section 66F of the Finance Act, 1994 with respect to 'commercial coaching' service and confirmed the service tax with interest and also imposed penalty. Aggrieved by said orders, present appeals are filed.

3. When the appeals came up for hearing, the Learned Counsel for the Appellant submits that the demand of service tax on hostel service is in the nature of residential accommodation and such service is not liable to service tax. The Learned Counsel further submits that even if it is considered as taxable service, hostel service rendered by the Appellant's students cannot be treated as a bundled service with education courses. The Learned Counsel draws our attention to the provisions of bundled services under Section 66F(3) which are subject to Section 66F(2) of the Act and submits that; as differential treatment is possible for hostels based on their specific description, the same are not to be bundled with education services; Hostel services cannot be bundled with education services; characteristics of bundle services are not present in the subject arrangement.

4. The Learned Counsel further draws our attention to the Education Guide and submits that the Tax Guide also provide that no straight jacket formula can be laid down to determine whether a service is naturally bundled in the ordinary course of business and each case has to be individually examined in the backdrop of several factors. Further there is no single price for the hostel and education service together and hostel and education service are not integral to each other. Further, it is submitted that even the Tax Guide recognizes the fact that dwelling

units for residence and food provided to the students in a boarding school will be covered by the negative list entry of 'residential dwelling'. Relevant extract of the same is re-produced as follows:

"4.12.4 Are services provided by boarding schools covered in this entry?

Boarding schools provide service of education coupled with other services like providing dwelling units for residence and food. This may be a case of bundled services if the charges for education and lodging and boarding are inseparable. Their taxability will be determined in terms of the principles laid down in section 66F of the Act. Such services in the case of boarding schools are bundled in the ordinary course of business. Therefore, the bundle of services will be treated as consisting entirely of such service which determines the dominant nature of such a bundle. In this case since dominant nature is determined by the service of education other dominant service of providing residential dwelling is also covered in a separate entry of the negative list, the entire bundle would be treated as a negative list service."

5. Further the Learned Counsel draws our attention to the impugned order and submits that the impugned order erred in respect of comparison by drawing distinction between a hotel and a hostel. As regards the finding given by the Adjudicating authority by relying on the decision of **M/s Narendra Singh Panwar Vs. Commissioner of Central Excise, Indoor - 2017 (51) STR 456 (Tri.Del**), the Learned Counsel submits that in the above matter, reference was made to construction related to the Government Department and conflict in the said case, pertains to taxability of construction of girls hostel under construction services or construction of residential complex services. By allowing the appeal filed by the assessee, the Tribunal held that hostel rooms are not be considered as residential house for the purpose of service tax. The Hostel is apparently meant for accommodation for girl students during their course studies. The individual rooms in the said hostel cannot be equated to a residential house or a flat which are covered under the category of construction of complex services for the

purpose of service tax. Thus, the impugned order confirming the demand was set aside. However, in the subject case by picking out phrases from the above judgment in isolation without reading the judgment as a whole, the Adjudication authority confirmed the demand. In this regard, Learned Counsel relied on the judgment of the Hon'ble Supreme Court in the matter of **M/s Kanwar Natwar Singh Vs. Directorate of Enforcement (262) E.L.T 15 (SC)** where it was held that a line and or word in a judgment cannot be read in isolation or as if interpreting of statutory provision to impute a different meaning to the observations.

6. As regards the finding related to bundled service, Learned Counsel draws our attention to the decision of the Tribunal in the matter of **M/s. Roy's Institute of Competitive Examination Vs. Principal Commissioner of Service Tax-I, Kolkata – 2025 (30) Centax 255 (Tri. – Cal.)** and submits that the Tribunal had considered the issue in detail where standalone hostel fees, revenue sharing with franchise partner and sale of newspapers/forms are not intrinsically connected to main coaching service, they cannot be taxed under 'Commercial Training and Coaching' Services without establishing service provider-recipient relationship. Learned Counsel also draws our attention to the Circular issued by Board vide D.O.F No. 334/1/2007-TRU where exemption was given to the taxable service under Renting of Removable Property to residential accommodation such as hotels, hostels, boarding houses, holiday accommodation, tents, camping facilities. Learned Counsel also draws our attention to the decision of the Tribunal in the matter of **M/s. Orient Flight School Vs. CC, Chennai** reported in **2023 (11) TMI 312 CESTAT, Chennai** wherein it is held that:-

> *"12. It is submitted by the Ld. Counsel that after the notification 33/2011 came into force w.e.f. 1.5.2011, the Board issued a circular. The demand has been confirmed mainly relying on this Circular FNo.137/132/2010-ST d. 11.5.2011. The said circular was challenged before the Delhi High Court in the case of Indian*

Institute Aircraft Engineering Vs Union of India - 2013 (30) STR 689 (Del.). The relevant part of the said Circular reads as under:-

> *"4.1 It is to also clarify that the coaching being provided by Flying Training Schools and Aircraft Maintenance Engineering Institutes would also not come under the scope of the exemption provided under the second category of the exemption notification mentioned above for the same reasons as mentioned in paragraphs 2 and 3 above. It is also pertinent to mention that the intent of the changes in the definition of Commercial Training or Coaching service as made in Budget of 2011 is evident on perusal of the explanatory letter of JS (TRU-II) D.O.F. no.334/2/2011-TUR, dated 28-2-2011 wherein at Para 3.3 it has been mentioned that - "The scope of the service is proposed to be expanded to include all the coaching and training that is not recognized by law, irrespective of whether the institute is providing any other course(s) recognized by law. Thus, the scope of the service has in fact been expanded.*
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> *5. In addition, it may also be observed that the institutes do not fall under the exemption Notification No.24/2004 (as amended), as the institute's courses do not directly enable training for getting the requisite employment.*
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> *6. Therefore, the said institutes/academies would clearly come in the category of coaching centers as laid out in section 65 (27) of the Finance Act ibid (either prior to or after Budget 2011) and therefore would be taxable. It is clarified that the contents of this instruction shall not override any statutory provisions. It is accordingly requested that immediate action may please be taken to safeguard revenue".*

The above Circular issued by the Board has been quashed by the judgment passed in the case of Indian Institute of Aircraft Engineering (supra). The adjudicating authority ought not to have *relied on the same Circular to confirm the demand even after remand".*

7. Learned Authorised Representative (AR) for the Revenue reiterated the finding in the impugned order and submits that since the appellant is providing service to international students who are undergoing courses offered by their country cannot be considered as recognized by law to consider under exempted category. Learned Authorized Representative (AR) further submits that the Hostel, in common parlance, is an establishment, which provides inexpensive food and lodging for a specific group of people, such as students, workers, or travelers, whereas hotel is an establishment providing accommodation, meals, and other services for travelers and tourists. Thus, it may be seen that except for specific group, both hostels and hotels have similar nature of transactions or business. Further, the stay in the hostel may be temporary depending on the duration of the course/training. For a crash course, the duration of the stay may be as short as seven days. Therefore, as clarified in 'An Education Guide (Tax Guide') dated June 20 2012' released by the Tax Research Unit, which gives an insight into the meaning of a 'residential dwelling', hostel also cannot be considered to be a residential dwelling so far as levy of service tax is concerned and consequently, cannot be said to covered under the entry (m) of Section 66D of the Finance Act, 1994, which deals with negative list. As clarified by the Board in 'Education Guide', if a place of residence is given for a short stay for different persons over a period of time, the same would be liable to tax. A hostel room is also allotted to different people over period of time and therefore it liable to tax. The point to be noted here is that all the facilities that are meant for the stay of the people will not fall under negative list under entry (m) of Section 66D of the Act, ibid. It further needs to be highlighted that such hostel accommodation is not generic and neither available to anyone, who desires stay. This is available only for the students of the assessee. Applying this logic, hostel can also be considered as dwelling premises. Hotel is only a temporary stay for tourists usually outside their city of permanent residence and hotels are opened to general public whereas

hostels in the present case are only available to students of the Appellant. Such hostels are not available to the general public at any cost or at any time. Therefore, even if the most general common parlance understanding of the word Hotel and Hostel, there is a great deal of difference.

8. Heard both sides and perused the records.

9. We find that it is an admitted fact that the Appellant is a deemed university, provided hostel facilities to students and the fee collected for hostels and utility services are not part of the fee for the courses. In few cases, the Appellant had refunded the hostel fee and other utility charges collected in advance from the students as they have not utilized the said facility. The hostels are residential dwelling provided to the student, and it is covered under the Negative list of services specified under Section 66D of the Act and provide exemption to service tax of renting residential accommodation if the same is used as a residence. Thus, considering the characteristic of a bundled service, the hostel service provided by the Appellant cannot be considered as a bundled service with education course as held by the Adjudicating authority. Thus, the finding in the impugned order regarding mandatory accommodation provided by the Appellant for a consideration is bundled service being integral part of commercial courses is unsustainable. Thus, the activities carried out by the Appellant fall under the Negative List under entry(m) of Section 66D of the Act. Further we observed that the clarification issued by the Board as per Circular No. 137/132/2010-ST dated 11.05.2011 has been quashed by the Hon'ble High Court of Delhi in the matter of Indian Institute of Aircraft Engineering (supra). The appellant being recognized as a deemed University by the Ministry of Human Resources and Development and University Grands Commission and constituent institutions comprising Medical, Dental, Engineering, Nursing, allied health etc., which offer Bachelors and Doctoral Degrees in these specialties which are recognized by law is therefore excluded from the ambit of levy of service tax.

10. In view of the above discussion the impugned order is unsustainable and is liable to be set aside. Accordingly, the impugned order is set aside, and the appeal is allowed with consequential relief, if any, in accordance with law.

(Operative portion of the order was pronounced in open court on conclusion of hearing.)

(P.A. Augustian)
Member (Judicial)

(Pullela Nageswara Rao)
Member (Technical)

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