

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
SOUTH ZONAL BENCH
BANGALORE**

ST/444/2008-DB

[Arising out of Order-in-Original No. 5/2008/ST dated
05/06/2008 passed by Commissioner Of Central Excise,
Customs and Service Tax, COCHIN]

**M/s. National Institute Of Fire
Engineering**

50/1147, railway Station Road
Edapally, COCHIN - 682024
KERALA

Appellant(s)

Versus

**The Commissioner of Central
Excise, Customs and Service Tax**

C R BUILDING,
I S PRESS ROAD, ERNAKULAM,
COCHIN - 682018
KERALA

Respondent(s)

Appearance:

Mr. CA P.J.JOHNEY, FCA

JOHNEY &CO
J& CO CHAMBERS,EDAPALLY COCHIN
COCHIN - 682024
KERALA

For the Appellant

Mrs. Kavitha Podwal, AR

For the Respondent

Date of Hearing: 18/04/2018

Date of Decision: 13/08/2018

CORAM:

HON'BLE SHRI S.S GARG, JUDICIAL MEMBER

HON'BLE SHRI DEVENDER SINGH, TECHNICAL MEMBER

Final Order No. 21128 /2018

Per : DEVENDER SINGH

The brief facts of the case are that the appellant is a Commercial Training Centre engaged in providing training to persons who aspire to take up employment in fire protection, lift technology and dental technology. A show-cause notice was issued to the appellant on 4.7.2007 on the ground that they were providing taxable services under the Finance Act, 1994 and they had not paid service tax on the amounts received by them from the persons undertaking training. The show-cause notice demanding service tax amounting to Rs.10,98,734/- and Education Cess of Rs.7,681/- as detailed below:

Sl. No.	Name of Service	Period	Service Tax	Education Cess
1	Franchisee Service	01.07.03 to 31.03.06	Rs.40,855/-	Rs.721/-
2	Commercial Training or Coaching	01.07.04 to 09.09.04	Rs.7,09,888/-	-
3	Intellectual Property Service	10.09.04 to 31.03.06	Rs.3,47,991/-	Rs.6,960/-
Total			Rs.10,98,734/-	Rs.7,681/-
Grand Total			Rs.11,06,415/-	

2. The matter was adjudicated and the entire demand was confirmed along with interest. Penalties under Section 76, 77 and 78 were also imposed. Aggrieved from the same, the appellant have filed this appeal.

3. The learned Chartered Accountant appearing for the appellant submits at the outset that they are not contesting the issue pertaining to franchisee service.

3.1 As for the other disputes, on the issue of Commercial Training or Coaching, the learned CA invited attention to the findings of the adjudicating authority in para 40 of the impugned order and stated that there was no dispute about the services provided by them as vocational training institute. Only issue was that department had demanded service tax for the disputed period from 1.7.2004 to 9.9.2004. Contention is that since in the period before the disputed period and after the disputed period, the service tax on vocational training institute was exempted, hence, the intention of the Government was to exempt the activity during the brief disputed period in the impugned order. In this regard, he relied on the judgment of the Hon'ble Delhi High Court in the case of *CST, Delhi vs. Ashu Exports Pvt. Ltd.* in CEAC 21/2013, CM APPL. 5462, 5463/2013 dated 10.3.2014.

3.2 With regard to the other issue of Intellectual Property Service (IPS), he submitted that since they had not made any invention or designed anything new, intellectual property rights was not involved. They were only providing study material to the students and the same was not covered by the term IPS. In this regard, he relied on the judgment dated 11.4.2013 of the

Principal Bench of this Tribunal in the case of *M/s. Cerebral Learning Solutions Pvt. Ltd. vs. CCE, Indore* in Service Tax appeal No.848/2008. He also pleaded against imposition of penalty under Section 78 as they were registered with the Department and were filing regularly 'Nil' returns.

4. Learned AR for the Revenue reiterated the findings in the order of the adjudicating authority.

5. As the appellants are not contesting the issue of franchisee service, accordingly, the demand of Rs.41,576/- pertaining to franchise service is upheld along with interest and equivalent penalty under Section 78 of the Finance Act, 1994.

On the second issue, we find that the appellant have contended that during the period from 1.7.2004 to 9.9.2004, when there was no exemption available for commercial training or coaching services, they should be allowed the benefit of exemption as the activity was exempted in the period preceding 1.7.2004 and the period after 9.9.2004. It was argued that intention of the government was to exempt the activity during the impugned period also. We are unable to agree with the reasoning given by the appellant because if it was the intention of the government to exempt the activity during this period, it would have done so in an express manner, which is not the case. We find that the

Notification No. 24/2004-ST dt. 10.09.2004 makes it clear that it is effective from 10.09.2004 and not before. It is trite law that exemption notifications have prospective effect unless it is explicitly provided that it is retrospective and the legislature provides for such retrospective operation.

6. We find that in the case of *Ashu Exports Pvt.Ltd.* (*supra*) relied upon by the appellant, the question under consideration was whether the narrowed down expression "vocational training institute" which was substituted in the Notification No.3/2010-ST dt.27.2.2010 would be applicable to the original Notifications No.9/2003-ST dt.20.6.2006 No.24/2004-ST dt.10.9.2004. It was in this background Hon'ble Delhi High Court held as below:-

" **11.** It is evident that the term "vocational training institute" included the commercial training or coaching centers which provide vocational coaching or training meant to "impart skills to enable the trainees to seek employment or to have self-employment directly after such training or coaching". The notion of such training institute having been recognized or accredited to nowhere emerges from such a broad definition. The further Notification of 2010 substitutes the existing explanation to the term "vocational training institute" and narrowing it to those institutes affiliated to National Council for Vocational Training offering courses in designated trade in fact supports the assessee. Had the intention been to exempt only such class or category of institutions, the appropriate authority would have designed such a condition in the original Notification of 2003 and Notification No. 10 of 2004 which had been relied upon in this case."

It is clear from the judgment of Hon'ble Delhi High Court that it examined the question of applicability of new definition to

the Notification No.9/2003-ST dt.20.6.2006 and Notification No. 24/2004-ST dt.10.9.2004. It was not examining the question of extending the benefit of exemption for the intervening period from 1.7.2004 to 9.9.2004 when there was no exemption notification at all. Hence, the ratio of the said judgment is not applicable to the facts of this case.

6.1 We also find that in the case of *British School of Language vs. CST, Delhi-2017* (4) GSTL 212 (Tri.-Del.), this Tribunal has held that for the period 1.7.2004 to 9.9.2004, during which the no exemption notification was available, tax liability for the said period shall be paid by the assessee.

7. In view of the above, we hold that the appellant are liable to pay service tax for the period 1.7.2004 to 9.9.2004 and accordingly uphold the order of the adjudicating authority for demand of service tax and interest on this issue.

8. On the third issue, we are unable to agree with the findings of the learned Commissioner that the study material for vocational courses are in the nature of Intellectual property service in view of the judgment of this Tribunal in the case of *M/s. Cerebral Learning Solutions Pvt. Ltd.* (supra) wherein this Tribunal held as below:

“8. Ld. DR would however persuade us to hold in favour of Revenue by relying upon the decision of this Tribunal in Sayaji Hotels Ltd. v. CCE, Indore reported in 2011 (24) S.T.R. 177 (Tri.-Del.) wherein the core issue was whether the exemption Notification No. 12/2003-S.T., dated 20-6-2003 is applicable to a deemed sale of goods, as in a transaction involving a composite service of mandap keeper/catering service which involves supply of food and beverages as well. This Tribunal in the distinct factual matrix of that case held that the word “sale” in the exemption Notification No. 12/2003-S.T., dated 20-6-2003 is to be limited to a distinct sale of goods, within the meaning of the expression “sale” as defined in Section 2(h) of the Central Excise Act, 1944 and that the benefit of exemption under the said Notification cannot be extended to a transaction which involves a works contract not involving sale of goods primarily. This decision is of no assistance to Revenue. The transaction in the appeal before us is a clear transaction of sale of study material by the assessee - appellant to its coachees/trainees. Its a distinct transaction for which “as concurrently found by the primary and appellate authority, separate value is receipted, documented and recorded”. In any event, the exemption notification engrafts no restrictive condition other than those set out therein which are satisfied in the present case. The restrictive interpretation of the Notification by the Board vide its clarificatory Circular No. 59/8/2003-S.T., dated 20-6-2003, is as earlier stated by us, unlawful and of no legal consequence.”

Accordingly, we hold that the order of adjudicating authority on the issue of intellectual property service is not sustainable. Accordingly, the demand of service tax, interest and penalty in relation to this issue of Intellectual Property Service is set aside.

8. As for the penalty under Section 78 of the Finance Act in relation to Commercial Training or Coaching, we find that the appellant has been filing nil returns regularly and it was within knowledge of the Department that the appellant had not paid

service tax for the period when the exemption was not available. Hence, the penalty under Section 78 of the Act Commercial Training or Coaching is not justified and the same is set aside.

9. In the result, the following order is passed:-

(i) Demand of Rs.41,576/- pertaining to franchise service is upheld along with interest and equivalent penalty under Section 78 of Finance Act, 1994 as the same has not been contested by the appellant;

(ii) Demand of service tax of Rs.7,09,888/- in respect of Commercial Training or Coaching is upheld along with interest;

(iii) Demand of Rs.3,47,991/- plus education cess of Rs.6,960/- in respect of Intellectual Property service is set aside; and

(iv) Penalty under Section 78 of Finance Act, 1994 in respect of Commercial Training or Coaching Service and Intellectual Property Service is set aside.

10. The appeal is disposed of as above.

*(Order pronounced in the Court on **13.08.2018.**)*

S.S GARG
JUDICIAL MEMBER

DEVENDER SINGH
TECHNICAL MEMBER