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

Appeal(s) Involved:

ST/38/2009-DB

[Arising out of Order-in-Appeal No. 205/2008 dated 30/05/2008 passed by CCE(Appeals-II), Bangalore]

LINUX LEARNING CENTRE PVT LTD.
NO.635, 6TH MAIN ROAD, HANUMANTHA NAGAR, BANGALORE

Appellant(s)

Versus

Commissioner of Service Tax
BANGALORE SERVICE TAX- I
NULL 1ST TO 5TH FLOOR,
TTMC BUILDING, above BMTC BUS STAND,DOMLUR
BANGALORE, - 560071
KARNATAKA

Respondent(s)

Appearance:

Shri Prateek, CA
MSSV & CO.
S.RAMASUBRAMANIAN
63/2,2ND FLOOR, (ABOVE CANARA BANK)RAILWAY PARALLAL ROAD,KUMARA PARK WEST,
BANGALORE - 560020
KARNATAKA

For the Appellant

Ms. Kavita Podwal, Superintendent(AR)

For the Respondent

Date of Hearing: 03/10/2018
Date of Decision: 03/10/2018

CORAM:
HON'BLE MR. S.S GARG, JUDICIAL MEMBER
HON'BLE MR. P. ANJANI KUMAR, TECHNICAL MEMBER

Final Order No. 21571 / 2018

Per : S.S GARG

The present appeal is directed against the impugned order dt. 30/05/2008 passed by the Commissioner(Appeals) whereby the

Commissioner(Appeals) has upheld the Order-in-Original and rejected the appeal of the appellant.

2. Briefly the facts of the present case are that the appellant is engaged in the business of offering Job Oriented Industry standard Course for job seekers and issue certificate on completion of the courses which enables the certificate holders to obtain job/employment. The appellant offers exclusive training on Linux operating system, which is open source free software. The appellant is claiming exemption under Notification No.9/2003 and Notification No.24/2004 up to 16/06/2005. From 16/06/2005, on the amendment of Notification No.24/2004, the appellant registered itself under Commercial Coaching Services and is paying service tax. On these allegations, a show-cause notice was issued alleging that the appellants are not entitled to the benefit of the said notification which is only clarificatory in nature. After following the due process, the original authority confirmed the demand and the same was upheld by the Commissioner(Appeals).

3. Heard both sides and perused records.

4.1. The learned consultant appearing for the appellant has fairly conceded that on merit, the appellant has no case in view of the judgment of the Hon'ble Supreme Court in the case of Sunwin Techno Solutions Pvt. Ltd. [2011(21) STR 97 (SC)] wherein the Supreme Court has held that the Notification No.19/2005-ST dt. 07/06/2005 (effective from 16/06/2005) is merely clarificatory in nature and that the services provided by computer training institutes are liable to service tax w.e.f. 01/07/2004 only. He further submitted that the entire demand in the present case is barred by limitation. He also submitted that the show-cause notice was issued on 23/03/2007 demanding service tax for the period 01/07/2004 to 15/06/2005 by invoking the extended period of limitation. He further submitted that in the show-cause notice, there is no allegation that the appellant has committed fraud, suppression, collusion etc. which are covered by the provisions of proviso to Section 73(1). In support of his submission, he relied upon the following decisions:-

i. CCE Vs. HMM Ltd. [1995(76) ELT 497 (SC)]
ii. Gargi Consultants Pvt. Ltd. Vs. CCE [2013(32) STR 654 (Tri. Del.)]

4.2. He further submitted that mere failure to pay tax cannot be equated that the assessee has indulged in fraud and suppression in view of the following judgments of the Hon'ble Supreme Court

i. Gopal Zarda Udyog Vs. CCE [2005(188) ELT 251]
ii. Uniworth Textiles Ltd. [2013(288) ELT 161]

4.3. He also submitted that extended period of limitation cannot be invoked when there was an interpretational issue involved. In support of this submission, he relied upon the following decisions:-

i. Suntex business Solutions Pvt. Ltd. Vs. CCE,C&ST [2017(51) STR 446 (Tri. Bang.)]

ii. Uni Ads Ltd. Vs. CCE,C&ST [2016(42) STR 547 (Tri. Bang.)]
iii. Bangalore Metropolitan Transport Corporation Vs. CST [2015(38) STR 976 (Tri. Bang.)]
iv. Padmini Products Vs. CCE [1989(43) ELT 195 (SC)]

5. On the other hand, the learned AR reiterated the findings of the impugned order.

6. After hearing both sides and perusal of the material on records, we find that as far as merit is concerned, the issue has been settled against the assessee in the case of Sunwin Techno Solutions Pvt. Ltd. by the Apex Court. Further, we find that in the present case, the entire demand is barred by limitation because the show-cause notice was issued on 23/03/2007 demanding the service tax for the period 01/07/2004 to 15/06/2005 by invoking the extended period of limitation. Further on perusal of the show-cause notice, we find that there is no whisper as to how the appellant has committed any of the acts mentioned under proviso to Section 73(1) of the Finance Act, 1994. Further, we find that there is no finding by both the authorities on the issue of invoking the extended period of limitation. Further we find that the Tribunal, in the case of Gargi Consultants Pvt. Ltd. cited supra, held that extended period of limitation cannot be invoked when the appellant was providing computer training services and had not paid service tax for the period July 2004 to March 2005. Further we find that the issue involved was relating to interpretation of the notification which was settled by the Supreme Court in the case of Sunwin Techno Solutions Pvt. Ltd. and therefore extended period cannot be invoked in such cases when issue relates to interpretation. In view of

our discussion above, we are of the considered view that the entire demand in the present case is barred by limitation. Consequently, we set aside the impugned order by allowing the appeal of the appellant with consequential relief, if any.

(Operative portion of the Order was pronounced
in Open Court on **03/10/2018**)

P. ANJANI KUMAR
TECHNICAL MEMBER

S.S GARG
JUDICIAL MEMBER

Raja...