

**CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL,
REGIONAL BENCH : BANGALORE**

COURT NO.1

Service Tax Appeal Nos.21599 & 21600 of 2016

(Arising out of Order-in-Original Nos.COC-EXCUS-000-COM-016 & 017/2016-17 dated 27.05.2016 passed by Commr. of Central Excise & Customs, Cochin)

M/s Cochin Shipyard Ltd.

P.O. Bag No.1653, Perumanoor P.O., Cochin-682015

Appellant

VERSUS

CCEx. & S.Tax, Cochin

C.R.Building, I.S.Press Road, Kochi-682018

Respondent

WITH

Service Tax Appeal Nos.20171 & 20172 of 2018

(Arising out of Order-in-Appeal Nos.COC-EXCUS-000-APP-238 and 239-2017 dated 22.09.2017 passed by Commr. of Central Taxes and Central Excises, Cochin)

M/s Cochin Shipyard Ltd.

P.O. Bag No.1653, Perumanoor P.O., Cochin-682015

Appellant

VERSUS

CCEx. & S.Tax, Cochin

C.R.Building, I.S.Press Road, Kochi-682018

Respondent

AND

Service Tax Appeal Nos.20173 of 2018

(Arising out of Order-in-Appeal Nos.COC-EXCUS-000-APP-241/2017 dated 22.09.2017 passed by Commr. of Central Taxes and Central Excises, Cochin)

M/s Cochin Shipyard Ltd.

P.O. Bag No.1653, Perumanoor P.O., Cochin-682015

Appellant

VERSUS

CCEx. & S.Tax, Cochin

C.R.Building, I.S.Press Road, Kochi-682018

Respondent

Appearance:

Mr.Kuriyan Thomas, Advocate for the Appellant

Mr.S.Devarajan, Dy Commissioner (A.R.) for the Respondent

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20171,20172,20173/18**

CORAM:

**HON'BLE SHRI P. K. CHOUDHARY, JUDICIAL MEMBER
HON'BLE SHRI P. ANJANI KUMAR, TECHNICAL MEMBER**

FINAL ORDER NOS. 20371-20375/2020

DATE OF HEARING : 03.03.2020
DATE OF PRONOUNCEMENT: 02.07.2020

Per P.K.Choudhary :

The present appeals have been preferred by the assessee, M/s. Cochin Shipyard Ltd, and involve common issues and hence are taken up together for disposal by this common order. In all these appeals, the assessee has challenged the demand of service tax raised in a periodic manner, under the category of 'Commercial Training or Coaching Services', for the period from April 2007 to June 2012 prior to the introduction of negative list as per S.66D and further for the period from April 2013 to March 2015 in the negative list regime. The demand during the interim period from July 2012 to March 2013 (falling under negative list regime) on identical issue stands decided by the Ld. Commissioner (Appeals) in favour of the assessee, which has not been challenged by the Revenue and has attained finality.

2. The facts of the case in brief are that the appellant assessee is a PSU mainly engaged in the activity of ship building and repair works. It is also running a Marine Engineering Training Institute which conducts courses for engineering students in the field of advanced fire-fighting and elementary first aid course, which activity is the subject matter of dispute in the present case. The Department entertained a view that the appellant is liable to pay service tax on the fee income earned from the students under the category of "Commercial Training or Coaching Services", against which the appellant is before us in the present appeals.

3. Sri Kuriyan Thomas, Advocate, appeared for the appellant and Sri S. Devarajan, Ld. Dy. Commissioner appeared for the Revenue.

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4. The Ld. Advocate appearing for the appellant, inter-alia, submitted that the course undertaken by them have been approved by the Director General of Shipping, Ministry of Surface Transport, Govt. of India and that all the decisions with regard to the curriculum, running of the institute, number of seats, format of the certificate to be issued by the institute are taken by the Director General of Shipping working under the Shipping Ministry, which is the statutory authority controlling the entire activity of the appellant for imparting the subject training. He also submitted that on successful completion of the course, the students are given a certificate, as approved by the Government in compliance to the provisions contained in the Merchant Shipping Act, 1958. The said courses undertaken by the appellant is a mandatory eligibility criterion for entry into the Merchant Navy, and hence, need to be considered as being "recognised under the law", and therefore, the same qualifies as exclusion from the definition of taxable service under the category of "Commercial Training or Coaching services". He also referred to the Final Order no. 20199 of 2019 dated 25.02.2019 passed by this Tribunal, rendered in their own case, for the period prior to the impugned period i.e. April 2007, wherein the demand has been set aside which has not been further challenged by the Revenue and has thus attained finality. He also referred to the Order-in-Appeal dated 17.05.2019 whereby the Ld. Commissioner (Appeals) has dropped the identical demand for the period July 2012 to March 2013 which has also not been challenged by the Revenue and has attained finality.

5. The Ld. Departmental Representative reiterated the findings of the lower authorities and submitted that the demand has rightly been confirmed and hence, the appeals are liable to be rejected being devoid of merits.

6. Heard both sides and perused the appeal records.

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7. We have perused the relevant definition for levy of service tax, as was existing in the pre-negative and post negative list regime which reads as below: -

"Section 65(27) of the Finance Act, 1994 up to 30.04.2011 – Commercial training or coaching Centre means any institute or establishment providing commercial training or coaching for imparting skill or knowledge or lessons on any subject or field other than sports, with or without issuance of certificate and includes coaching or tutorial classes but does not include preschool coaching and training class or any institute and training Centre or any institute or establishment which issues any certificate or diploma or degree or any educational qualification recognized by law for the time being in force."

Further, the amended provisions as was applicable during 01.05.2011 to 30.06.2012 reads as below: -

"Commercial training or coaching Centre means any institute or establishment providing commercial training or coaching for imparting skill or knowledge or lessons on any subject or field other than the sports, with or without issuance of a certificate and includes coaching or tutorial classes."

During the above period, a specific exemption was provided vide Notification no. 33/2012-ST dated 25.04.2011 which exempted – *"any coaching or training leading to grant of a certificate or diploma or degree or any educational qualification which is recognized by any law for the time being in force."*

Effective from 1st July, 2012, the Negative List as per Section 66D, in clause (i) inter-alia, covered *"education as a part of a curriculum for obtaining a qualification recognized by law for the time being in force"*, on which service tax shall not be leviable.

8. On perusal of the above legal provisions, we find that the institute providing educational degree or qualification, which is "recognized by law", have always been excluded from the purview of service tax. We

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have also perused the Final Order no. 20199 of 2019 dated 25.02.2019 passed by this Tribunal in the assessee's own case and find that the issue pertaining to taxability during the period prior to the impugned period has been examined at length, wherein it has been observed that the courses undertaken by the appellant in compliance with the provisions of the Merchant Shipping Act, 1958, would have to be considered as being "recognised by law" and hence, excluded from the service tax levy. Since the aforesaid decision has been accepted by the Revenue, we agree with the submissions made by the Ld. Advocate that the above decision has attained finality and the matter is now barred by the principle of *res judicata*. The statutory provisions, as applicable in the impugned period referred above, also provides exclusion to the courses recognized under the law for the purpose of taxability. This position has also been accepted by the Ld. Commissioner (Appeals) in the Order-in-Appeal dated 17.05.2019, which has also not been challenged by the Revenue and hence, attained finality. In view of the above matter, we do not find any reason to take a contrary stand while deciding the taxability during the impugned period.

9. We have also carefully examined the impugned appellate orders which are under challenge in these appeals. The lower appellate authority has upheld the demand on the premise that the course offered by the appellant cannot be said to be statutory in nature and hence, cannot be said to have been recognised by law, which in our view is factually incorrect. The lower authority seemed to have lost sight of the factual position that the subject courses have been approved by the Director General of Shipping, Ministry of Surface Transport, Govt. of India, in consonance with the provisions of the Merchant Shipping Act, 1958, a fact which was always available before them. There cannot be any iota of doubt to hold that the courses assumes to be of statutory nature and hence, qualifies as being "recognised under the law" and consequently, eligible

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for claiming exclusion from levy of service tax both in the pre-negative list and negative list service taxation regime.

10. In the course of hearing, the Ld. Advocate for the appellant submitted a list containing detailed break-up of fee earned from courses which have been approved as well as courses which have not been approved by the Directorate General of Shipping. We find that the same is being submitted for the first time before the Tribunal and hence, were not available before the adjudicating authorities below. In view of the same, we are of the view that justice would be met if the matter is remanded to the original authority for limited purpose of computation of service tax payable on courses not approved by the Directorate General of Shipping, restricted to the period covered under normal period of limitation, since the extended period of limitation is not available in absence of fraud or suppression on the part of the appellant. On the same count, penalty is also not imposable and hence set aside in entirety.

11. In view of the above findings, the demand of service tax on fee from approved courses is set aside. The appeals are thus, disposed of in the manner stated above.

(Pronounced in the open court on 02.07.2020)

(P. K. Choudhary)
Member (Judicial)

(P. Anjani Kumar)
Member (Technical)