

CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
SCO 147-148, SECTOR 17-C, CHANDIGARH – 160 017

COURT NO. I

APPEAL NO. ST/61846/2018 & ST/60434-60438/2017

[Arising out of Order-in-Original No. 14-20/CE/CHD-II/2017 dated 28.02.2017 passed by the Commissioner of Central Excise Chandigarh-II]

Date of hearing/decision: 07.12.2018

M/s Swift Institute of Engineering & : Appellant(s)
Technology
Sh Parveen Chaudhary Accountant
Dr. Gopal Munjal President
Sh Kulbhushan Aggarwal Head
Commercial
Dr. Maninder Mehmi Head Administrator
Sh V R Mehta Treasure

VS

C.C.E. & S.T. Chandigarh-II : Respondent(s)

Appearance:

Present for the Appellant(s): Shri Surjeet Bhadu (Advocate), Shri Veer Singh (Advocate)

Present for the Respondent(s): Shri G.M. Sharma (AR)

CORAM:

Hon'ble Mr. Ashok Jindal, Member (Judicial)
Hon'ble Mr. Bijay Kumar, Member (Technical)

FINAL ORDER NO. 63658-63663 /2018

Per : Bijay Kumar

All these appeals arise out of a common adjudication order No. 14-20/CE//CHD-II/2017 dated 28.02.2017 (Herein after referred to as the impugned order) passed by the Commissioner of Central Excise commissionerate, Chandigarh-II (hereinafter refer to

adjudicating authority) wide which, he has confirmed the demand the against the appellants as under:-

- i) Demand of Service Tax amounting to Rs. 4,48,58,485/- (Rupees Four Crore Forty Eight Lakh Fifty Eight Thousand four Hundred and Eighty Five only) under Section 73(1) of the Act by invoking extended period of limitation;
- ii) Recovery of interest on the confirmed demand, as applicable under Section 75 of the Act from the Noticee;
- iii) Penalty of Rs. 10,000/- (Rupees Ten Thousand Only) each upon the Noticee under Section 77(1)(b) and Section 77(1)(c) of the Act.
- iv) Penalty of Rs. 4,48,58,485/- (Rupees Four Crore Forty Eight Lakh Fifty Eight Thousand Four Hundred and Eighty Five only) under Section 78 of the Act. However, in terms of proviso to Section 78(1) of the Act, the amount of penalty shall stand reduced to twenty five percent if the same is paid alongwith the amount of outstanding Service Tax and interest within 30 days from the date of communication of this order;
- v) Penalty of Rs. 10,000/- (Rupees Ten Thousand only) each on Dr. Gopal Munjal, president, Sh. V.R Mehta, Treasurer; Sh. Kulbhushan Agarwal, Head Commercial, Ind-Swift Group; Dr. Maninder Mehmi, Head Administrator; Sh. Parveen Chaudhary and Sh. Jagdish Kumar, both Accountants under Section 77(2) of the Act.

2. Brief facts of the case are that M/s Swift Fundamental Research and Education Society, (for short main appellant) are engaged in providing education and research in medical sciences, literature,

music, drama and fine arts ands are registered under Societies Registration Act 18/60 as amended by Punjab Amendment Act, 1957. The main appellant had been running the various educational institutions at Gaggar Sarai District, Patiala such as:

(i) M/s Swift institute of nursing (SIN) affiliated to Baba Farid University of Health Sciences,

(ii) Swift School of Pharmacy (SIP) affiliated to Punjab Technical university, Bathinda.

(iii) Swift Institute of Management and computer Sciences (SIMCS) affiliated to Punjabi University, Patiala.

(iv) Swift Technical Campus (STC), affiliated to Punjab Technical University, Bathinda (now closed)

(v) Swift institute of Engineering and Technology (A part of Swift Technical Campus) affiliated to Coventry University, U.K. (now closed).

Acting on the intelligence that the main appellant had been engaged in providing vocational Training to students/corporate employees and they had not discharged their Service Tax liability on the same, the investigation against them was instituted. After the investigation, it was concluded that the appellant had been providing the commercial training and coaching service as defined under Section 65(26) of the Finance Act, 1994 (herein after referred to as the act). It was found from the ACEs record, the main appellant was registered only for providing GTA service vide registration No. AAFTS6189MD001. The main appellant had failed to pay any service tax for the GTA service since the date of registration. After the investigation, the appellants were visited with the show cause notice dated 22.04.2016 and the demand as has been confirmed by the adjudicating authority as

above. The other appellants, were (i) Dr. Gopal Munjal, President; (ii) Sh. V.R. Mehta, Treasurer (iii) Sh. Kulbhushan Agarwal, Head Commercial, Ind-Swift Group; (iv) Dr. Maninder Mehmi, Head Administrator; (V) Sh. Parveen Chaudhary and (VI) Sh. Jagdish Kumar, both accountants against them penalty were confirmed under Section 77(2) of the Act.

4. Ld. Advocate on behalf of the appellants submits as under

4.1 That the main appellant SIET had been issued a demand of Rs. 1,95,65,159/- on the basis of ledger action under head " vocational training". He further submits that the appellant is mainly a degree college providing of recognize degree course which are recognized under law by way of affiliation to various universities. It was submitted that the main appellant does not provide alleged course or training; the show cause notice has also not identified the person to whom such trainings were provided as the same could be provided to the natural persons only.

4.2 He further submits that certain amounts are paid by their companies, however, there is no link of such payment with any vocational training. None of the staff were interrogated by the revenue to confirm that such a vocational courses are being provided by the main appellant and they have the requisite infrastructure for conducting the courses.

4.3 It was impressed upon that the department has issued the tally software demand as per data without verifying the same. It was further submitted that the reliance was placed on the data without following the provisions of Section 36B of the Central Excise Act, 1994. It was also argued that accountant, Mr. Promod being dissatisfied with the management of college starting blackmailing,

manipulated the tally data and gave complaint to the service tax department, which was confirmed by a new accountant, Sh. Praveen Chaudhary; that the tally data printed by the service tax department was from the computer of ex-accountant.

4.4 It was also submitted that the receipt/donations from where sister companies have been taken as a value for services provided by the main appellant, is also not correct. He also submitted that two statements of the CA, Ms. Bindu Garg, were recorded under Section 14 of the Central Excise Act as made applicable to in the service tax matter vide section 83 of the Finance Act, 1944 were not inculpatory against the main appellant. She further stated that she not sure whether the ledger shown to her were those which were used for preparing the balance sheets of the main appellant.

6. Ld. Advocate also submits that the Ld. adjudicating authority has not followed to Section 9D of the Central Excise Act, as made applicable in the matter of Service Tax. The cross examinations were not been conducted by the Id. adjudicating authority. Ld. advocate relied upon the decision of M/s Popular Paints and Chemicals Vs. C.C.E final order No. 52716-52718/2018 and in the case of M/s Magnum Steel Ltd. Vs. CCE 2017 (358) E.L.T. 529 (Tri. Delhi); regarding the demand for the degree course of Coventry University, it was submitted that the issue could be decided in two parts that is for period from October 2010 to 30th June 2012 and 1st July 2012 to 31st March 2015. The period October 2010 to 30th June 2012 pertained positive list regime and period 1st July 2012 to 31st March 2015 is covered by the negative list regime.

7. It was also mentioned by the Ld. advocate that the present proceedings on the account of the fact as to where the exemption of service tax from October 2010 to March 2015 under both positive list and negative list regime of Finance Act which is summarized as under:

I. From October 2010 to 30.04.2011: The definition of commercial training or coaching did not include 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.

II. From 01.05.2011 to 30.06.2012: The exclusion as explained above was omitted by the Finance Act 2011 however an exemption Notification 33/2011-ST dated 25.04.2011 was issued with effect from 01.05.2011. The exemption was provided to service being coaching or training leading to grant of a certificate or diploma degree or any educational qualification which is recognized by any law for the time being in for force.

III. From 01.07.2012 to 13.05.2016: The negative list services provided under Section 66D of the Finance Act 1994 were excluded from the charge under Section 66B. The service under clause (L) the relevant "66 D (I) services by way of-

(i).....

(ii) *education as a part of a curriculum for obtaining a qualification recognized by any law for the time being in force;*

8. It was impressed upon by the Ld. advocate that the recognition by law for the time being in force is of wide import and has to be given full meaning is much wider than affiliation under any law. There course is recognized by Punjab Technical University Act, 1966 and the

appellant's course is recognized by the in collaboration with Coventry University. A copy of the agreement dated 11.02.2012 between PTU and the main appellant was placed on the record.

9. Ld. Advocate further submits that the course for which the degree is issued by the Coventry University are recognized in India by Punjab Technical University and therefore exemption is available to this particular course conducted by the main appellant. Reliance was placed on the decision of Malappuram Distt. Parallel College Assn. Vs. UOI 2006 (2) STR 321 (Kerala). He further submits that the Coventry University provided the course, which is recognized by law in UK. The department has accepted this fact in the show cause notice to the effect that Coventry University is formed under the Education Reforms Act, 1988 and Higher Education Act, 1992 for which the certificate issued by the British Council. This Course is also recognized by Punjab Technical University regarding fees charge.

10. The department wanted to tax the fee under head franchise service under reverse charge of mechanism. It was submitted that the said course is Programmes Approval Agreement and thus no franchise agreement as it has not fulfilled the definition of the franchise service under the Finance Act. As per the agreement, the schedule 4 the Coventry University has to perform their part in the course of bachelor degree such as approving curriculum, course documentation, nominating external examiners from the Coventry University setting up the paper, post moderates the marking of papers, being part of the examination board etc. as per the Schedule 1 of the Financial arrangement is provided by which cannot come under the franchise services, regarding the transportation charge.

11. The Id. Advocate considered to the fact during relevant period, the exemption was withdrawn for the transportation services provided by the educational institute. By the withdrawal of exemption, was resorted once again, however, he is not pressing the issue before us and willing to deposit the amount of service tax on, the transportation service provided by the main appellant, to the extent of Rs. 4.23 lakhs.

12. On the other hand, Ld. AR supports the impugned order on interrogating the ground for confirmation of demand against the appellant.

13. We have heard the parties and carefully considered the facts of the case.

14. The issue to be decided by us is regarding the classification of the courses being provided by the appellant falls under commercial coaching services and franchise services or not. It is a fact that the main appellant are recognized as Research and Education Society and conducts various courses affiliated by the various universities and also as per AITC approved courses and awards degree to the students. Regarding courses, which are being provided in collaboration with Coventry Universities, the same are also recognized by the UK government as well as the parallely by the Punjab Technical Universities. As Students are being enrolled by the main appellant initially to their institute and subsequently the students, who desired to pursue their study in the Coventry

University, the appellant facilitated their study in the Coventry University and charged fee from them which were subsequently transferred to Coventry University. This course is parallelly recognized by the Punjab Technical University as stated above. Accordingly, we are of the view that the main appellant is providing the educational services approved by the various Universities recognized under law for the AITC approved course. The fact that some of the students are being the Coventry University cannot be classified as the franchise services as proposed by the Revenue the franchise service is defined under Finance Act as under. We also find that the service by the way of education as a part of recognized university recognized by law is taxable neither taxability during the positive list nor under the negative list which has been rightly pointed out by the Ld. advocate. It is also emanates from the decision of the Hon'ble High Court **Mallapuram Parallel College Associates (Supra)**.

15. In view of the above, we find that the issue at hand is covered in favour of main appellant by the decision of the Hon'ble High Court.

16. Further we are in agreement with the submissions made by the Ld. Advocate that procedure as prescribed in Section 9 D of and Section 36 B has not been followed by the Ld. Adjudicating Authority, and therefore, the impugned order is not sustainable in view of ration laid down in case of **Popular Paints(supra)** and **M/s G. Tech Industries vs. Union of India. [2016 (339) ELT P & H]**

17. The main appellant has not disputed regarding the transportation of service the same is liable to be confirmed.

18. As the main service, other than the transportation service is held to be not liable for service tax, we hold demand on other appellants, who have been visited with the penalty, is also not sustainable and liable to be set aside.

19. In view of above, we set aside the impugned order but for the service tax on the transportation service. We also set aside the penalty imposed on other appellants under the provisions of Finance Act. In the result, the appeal is allowed partially in above terms.

(Order dictated and pronounced in the open court)

Bijay Kumar
Member (Technical)

Ashok Jindal
Member (Judicial)

Kailash