

**CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHANDIGARH**

REGIONAL BENCH - COURT NO. I

Service Tax Appeal No. 55681 of 2013

[Arising out of OIA No. 206-207/ST/App/CHD-I/12 dated 29.10.2012 passed by the Commissioner (Appeals) of Customs & Central Excise, Chandigarh-I]

M/s Hi Tech Point

SCO 96-97, Sector 34-A, Chandigarh-160022

.....Appellant

VERSUS

**Commissioner of Service Tax,Respondent
Chandigarh-I**

C.R. Building, Plot No. 19, Sector 17-C Chandigarh

APPEARANCE:

Shri Rakesh Malhotra and Shri Vardaan Malhotra, Chartered Accountants
for the Appellant

Shri Narinder Singh and Shri Yashpal Singh, Authorized Representatives for
the Respondent

CORAM: HON'BLE MR. S. S. GARG, MEMBER (JUDICIAL)

HON'BLE MR. P. ANJANI KUMAR, MEMBER (TECHNICAL)

FINAL ORDER NO.60393/2025

DATE OF HEARING: 27.01.2025

DATE OF DECISION: 07.03.2025

PER: P. ANJANI KUMAR

The appellants M/s High Tech Point were providing Taxable Service of Commercial Training or Coaching as defined under section 65(105) (zzc) of Finance Act at 1994; it appeared to the Revenue that during the period 1.7. 2004 to 15.6.2005, The appellant received a

sum of Rs. 2, 71, 23, 851 and have not discharged applicable service tax of Rs.24,21,676; further, it appeared that the appellants did not pay Service Tax on Rs.14,72,550 they received as advance and the they did not pay service tax of Rs 65,802 on the difference of assessable value of Rs 20,526 for the year 2006-2007 and difference of Rs 5,12,058 for the year 2007-08 65,802, arrived on reconciliation of Balance Sheet and ST-3 returns. The appellants however have paid Rs 65,802 with interest on 28.8.2009. Accordingly, it appeared to the Revenue that the appellant was required to pay Service tax of Rs 24, 21 676. A show cause notice dated 22nd October 2009 was issued to the appellants demanding service tax along with interest and penalties. The original authority vide order dated 27th October 2010, dropped the demand of Rs 18,32,583(for the period 10.09.2004 to 15.06.2005); confirmed a demand of Rs.3,94,047 (for the period 1.7.2004-09.09.2004) and a demand of Rs. 1,29,244 (for the advances received as on 1.7.2004) along with interest and penalties while confirming and appropriating Rs 65,802 paid by the appellants.

2. Both the Revenue and the appellant filed appeals before the Commissioner (Appeals) in respect of demands dropped and confirmed respectively. Learned Commissioner (Appeals, vide impugned order dated 5th November 2012, allowed the appeal filed by Revenue relying of the Judgment of Hon'ble Supreme Court in the case of Sunwin Technosolution Pvt Ltd 2011(21) STR 97(SC) and partly allowed the appeal of the appellant by setting aside the penalty imposed under Section 76, holding as under:

9. In view of the clear-cut findings given by the Hon'ble Supreme Court (supra) it is clear that the service tax on the services provided by the appellant No.1 was payable for the period 10.9.04 to 15.6.05. Thus, the appellant no. 1 is liable to pay service tax of Rs 18,32,583 and the findings of the adjudicating authority on this account needs to be set aside and accordingly set aside.

11. The appellant no.1 in their appeal has also contested that the no service tax was leviable to 10.9.04. In this context it is observed that the service provided by vocational/computer/ recreational training institute were exempt from payment of service tax w.e.f. 1.7.03 vide Notification no. 9/2003 and the exemption was extended up to 30.6.04 vide notification No. 1-ST dated 4.2.2004. Vide notification no. 24/2004-ST dated 10.9.04 the services provided by computer training institute were taxable under the category of Commercial Coaching and Training. It is therefore clear that there was no exemption available to the appellant w.e.f. 1.7.04 and the adjudicating authority has rightly confirmed the demand of tax for the period 1.7.04 to 9.9.04.

3. Learned Consultant for the appellants reiterates the grounds of appeal and submits that Commissioner appeals ought to have appreciated that the appellant is a "Vocational Training Institute" as defined in the exemption notification; Case of M/s Sunwin Technosolutions Pvt. Ltd. is not applicable; when there are more than one entries in a notification, deletion of one entry will not take away the benefit given by the other entry as held in Share Medical Care 2007(209 ELT 321(SC)) and other cases; while interpreting the notification, intention of the government is not required to be ascertained; an amendment cannot confirm a retrospective

applicability and create a liability which did not exist before. He relies on the following:

- Indian Petro Chemicals – (1997) 11 SCC 318
- H.C.L. Limited – (2001) 130 ELT 405 (SC)
- Kerala State Cooperative Marketing Federation Ltd. – (1998) 5 SCC 48 : JT 1998 (4) SC 145
- Mediwell Hospital & Health Care Pvt. Ltd. – (1997) 1 SCC 759 : JT 1997 (1) SC 270
- Compack Private Limited – 2005 (189) ELT 3 (SC)
- Sedco Forex – [2005 (12) SCC 717]
- Martin Lottery Agencies Ltd. – 2009 (14) STR 593
- Hemraj Gordhandas – [1978 (2) ELT J350 (SC)]
- Rukmani Pakkwell Traders – 2004 (165) ELT 481 (SC)
- Sunder Steels Ltd. – 2005 (181) ELT 154 (SC)
- TISCO Ltd. – (1978) 1 ELT J61
- Glaxo Smithkline Pharmaceuticals Ltd. – [Order No.A/668/WZB/2004-C-II dated 20.08.2004]
- MRF Ltd. – 2005 (179) ELT 472 (Tri. Mad.)
- Yokogawa Blue Star Ltd. – 2005 (186) ELT 601 (Tri.)
- Leela Jain – AIR 1965 SC 1296
- Kush Saigal – (2000) 4 SCC 526
- Star Neon Singh Vs. Commissioner [2002 (141) ELT 770 (Tri- Del.)]
- Flyingman Air Courier Pvt. Ltd. Vs. CCE, Jaipur [2004 (170) ELT 417 (Tri-Del)]
- ETA Engineering Ltd. Vs. Commissioner [2004 (174) ELT 19 (Tri-LB)]
- Hindustan Steel Ltd. – 1978 (2) ELT J 159 (SC)
- Anantharam Veerasinghaiah & Co. v. CIT [1980] 123 ITR 457 (SC):
- CIT v. Khoday Eswara & Sons [1972] 83 ITR 369 (SC);
- CIT v. Anwar Ali [1970] 76 ITR 696 (SC);
- Cement Marketing Co. of India v. Assistant Commissioner of SalesTax 1980 (6) ELT 295 (SC)
- EID Pary (1) Ltd. v. Asstt. Commissioner of Commercial Taxes AIR 2000 (SC) 551
- Sunwin Technosolutions Pvt Ltd v. CCE, Ranchi 2007 (7) STR 700(Tri-Kol)
- Doon Institute of Information Technology Pvt Ltd v. CCE, Meerut - 12008 (05) LCX 0308 (CESTAT-Delhi)
- Uttara (Training, software and allied service) v. C.S.T. Bangalore 2009 (14) STR 218 (Tri-Bang)
- Stag Software Pvt Ltd v. Commissioner of Service Tax, Bangalore 2008 (10) STR 329 (Tri-Bang)
- Stag Software Pvt Ltd v. Commissioner of Service Tax, Bangalore 200 (16) STR 144 (Kar)".

4. The appellant filed additional grounds stating that the demand is time barred; there was no suppression etc. with intent to evade payment of duty; the appellant had a *bona fide* belief that their activity was not taxable in view of various judgments available during the relevant period; the fact was acknowledged by the impugned order; therefore, the extended period cannot be invoked. He relies on the following:

- Gargi Consultants Pvt. Ltd. – MANU/CE/0076/2013
- NIIT Ltd. – MANU/CE/0440/2015
- Pentasoft Technologies Ltd. – MANU/CC/0319/2018

5 Learned Authorized Representative for the Revenue reiterates the findings of the impugned order extensively quoting from the judgments and extracting the notifications and relying primarily on the Hon'ble Supreme Court's decision in the case of Sunwin Technosolutions Pvt Ltd and relying on other judgments of the tribunal as follows.

- Commissioner of Central Excise V. Sunwin Technosolution P. Ltd-2011(21)STR 97 (SC)
- International Gemological Institute (1) Pvt Ltd -2019 (21)GSTL 407(Tri-Mum)
- Mind Q. Systems Pvt. Ltd. Versus Commr. of Cus., C. Ex. & S.T., Hyderabad-II reported as 2020 (35) G.S.T.L. 304 (Tri. - Hyd.)
- Sadhana Educational & People Dev Services Ltd V. CCE Pune-III-2014(33)STR 575 (Tri-Mum)
- IC Financial Analysts of India V CC & CE Hyderabad-II 2013(30)STR 273(Tri-Bang)
- Commissioner of Service Tax Delhi V. IILM Institute for Higher Education- 2019(28)GSTL 118(Tri-Del)
- Great Lakes Institute Of Management Ltd. Versus Commr. of S.T., Chennai reported as 2013 (32) S.T.R. 305 (Tri. LB)
- Patanjali Yogpeeth Trust reported as 2018 (363) E.L.T. 144 (Tri. - Del.)

- Aircell Digilink India Ltd. vs. Commissioner of Central Excise [2006 (3) S.T R. 386 (Tri.- Del.)
- Andhra Pradesh State Electricity Board Vs Collector Of Central Excise, Hyderabad [1984 (16) E.LT. 579 (Tribunal)
- Bajaj Travels Ltd. vs Commissioner of Service Tax reported as 2012 (025) STR 0417 (Del.)
- Mett Macdonald Ltd. Vs. C.C.E., Jaipur reported in 2006 (2) S.T.R. 524 (Tri.-Del.)
- Lovely Autos Vs. Commissioner of Central Excise, Ludhiana reported as 2023 (79) G.S.T.L. 258 (Tri. - Chan.)
- Espn Software India (P) Ltd. Versus Commr. of Service Tax, New Delhi - 2014 (35) S.T.R. 927 (Tri. - Del.)

6. Regarding the issue of limitation Learned Authorized Representative submits that the appellants did not get themselves registered even though the service rendered by them was taxable from 1/7/2003 and CBEC issued circular no. 65/14/2003 dated 5/11/2003; even when the exemption under notification no. 9/2003-ST dated 20/6/2003 was amended with effect from 30/6/2004; they did not comply with the various summonses; Shri Rajesh Vaidya, Partner of the appellant, accepted that though exemption was not available after 1/7/2004, they registered themselves on 22/7/2005 ; they did not pay Service Tax even after 1/7/2004 till 10/9/2004; they did not pay Service Tax correctly even after the issuance of notification no. 19/2005 dated 7/6/2005 ; they deposited the differential tax of Rs. 65,802/- on 28/8/2009 after investigation started. He relies on the following cases and submits that extended period is correctly invoked.

- Patanjali Yogpeeth Trust 2018 (363) E.L.T. 144 (Tri. Del.)
- Aircel Digilink India Ltd 2006 (3) STR 386 (Tri.- Del.)
- Andhra Pradesh State Electricity Board 1984 (16) E.LT. 579 (Tribunal))
- Bajaj Travels Ltd. vs Commissioner of Service Tax 2012 (025) STR 0417 (Del.)
- Mett Macdonald Ltd 2006 (2) S.T.R. 524 (Tri.-Del.),
- Lovely Auto 2023 (79) G.S.T.L. 258 (Tri.- Chan.)

- ESPN Software India (P) Ltd 2014 (35) S.T.R. 927 (Tri. Del.)

7. Heard both sides and perused the records of the case.

8. Brief issue involved in the case is as to whether the appellants are liable to pay service Tax during the period 1.7.04 to 9.9.04 and 10.9.04 to 15.6.05 and as to whether there is a case for invocation of extended period. As regards the merits of the case, the appellants rely on various points raised as above, whereas Revenue relies mainly on the decision of Supreme Court in the case of M/s Sunwin Technosolutions Pvt Ltd (supra). We find that Hon'ble Supreme Court in Sunwin Technosolutions Pvt Ltd (Supra) held as under

9. We have considered the said submission. The notification dated 10th September, 2004 was issued and made effective from the date of its issuance. The same did not include the concept of 'computer training institute' within its ambit and under the aforesaid notification, exemption was only granted to vocational and recreational training institute. A computer training institute which is defined and was included in the Notification dated 20th June, 2003 was specifically excluded from the w of the notification dated 10th September, 2004. The Central Government while doing so was fully conscious of the implication thereof and also of the fact as to what constitutes a computer training institute as defined in the notification dated 20th June, 2003.

10. Therefore, in our considered opinion, the Central Government was fully conscious of the fact that the said computer training institute should not get the exemption and intended the same to be shown by specifically excluding the same from the purview of the notification dated 10th September, 2004. The notification was also in operation from the date of its issuance, i.e., from 10-9-2004 to 15-6-2005 without there being any other intendment.

11. So far as the contention of the learned counsel for the respondent in respect of the contents of the notification dated 7th June, 2005 is concerned, in our considered opinion the said amendment was brought in by adding the proviso more or less in the nature of clarification and the same was made effective

from 16-6-2005. The Government thought it fit to make it abundantly clear by issuing the said notification. The liability, so far as the respondent is concerned, to pay the service tax between the period 10-9-2004 to 15-6-2005, therefore subsisted "

9. We find that the Hon'ble Supreme Court made it abundantly clear that there is no doubt as to the taxability of Computer Coaching and Training Institutes during the period 10.09.2004 to 15.06.2005. Further, we find that the Hon'ble Supreme Court has interpreted the legislative intent behind the Notification in no uncertain terms. This being so, we are not inclined to buy the argument of the appellants that while interpreting the notification, intention of the government is not required to be ascertained; an amendment cannot confirm a retrospective applicability and create a liability which did not exist before. In the case cited above, Hon'ble Apex Court has decided the very same issue being agitated by the appellant. Therefore, reliance on other cases is of no avail. We find that the Appellants have not made out any case as far as the merits of the case are concerned.

10. Coming to the issue of Limitation, we find that the appellants argue on the fact that there were conflicting judgments during the relevant time and therefore, the appellants had reasons to have a bona fide opinion that the services rendered by them are not taxable. The Learned Authorized Representative on the other hand argues on the point that the appellant has not registered themselves; did not pay applicable service Tax; did not file returns; did not appear on summons etc. We are of the considered opinion that all these factors do not in themselves display a deliberate act of suppression etc. with

an intent to evade payment of duty as held in a catena of judgments. The fact that there were conflicting judgments during the relevant time is accepted by Learned Commissioner (Appeals). He finds that:

10. Regarding the penalty on the above demand, it is observed that at the relevant time Hon'ble CESTAT in five cases had held that the service tax was not payable during the 10.9.04 to 15.6.05 and it was only after the decision of the Hon'ble Supreme Court the matter regarding levability of service tax during the above period was settled. It is the clear case of interpretation of statute. There is catena of judgments that when the issue is regarding the interpretation of statute the penalty is not imposable. Keeping this in view I from imposing penalty on this amount.

11. We find that there is a considerable force in the argument of the appellant on limitation and is supported by finding of the Learned Commissioner (Appeals). We find that the department has not filed any appeal against this finding giving cogent reason and evidence. Therefore, the contention of the Revenue is not tenable and revenue is not free to raise this issue now. In the facts and circumstances of the case, we find that the cases relied upon by the department are not applicable. We find that the appellant has a strong case in their favour on limitation.

12. In the result, while we hold that the exigibility of the services rendered by the appellant during the period in dispute is beyond doubt,

we hold that the appellants succeed on limitation. The appeal is thus allowed on limitation.

(Order pronounced in the open court on 07/03/2025)

(S. S. GARG)
MEMBER (JUDICIAL)

(P. ANJANI KUMAR)
MEMBER (TECHNICAL)

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