IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
SOUTH ZONAL BENCH, CHENNAI

Appeal No. ST/377/2010

(Arising out of Order-in-Appeal No. 44/2010 (M-ST) dated 24.3.2010 passed by the Commissioner of Central Excise (Appeals), Chennai)

M. Rajan Appellant

Vs.

Commissioner of Service Tax, Chennai Respondent

Appearance

Shri G. Natarajan, Advocate for the Appellant
Shri S. Govindarajan, AC (AR) for the Respondent

CORAM

Hon'ble Ms. Sulekha Beevi C.S., Member (Judicial)
Hon'ble Shri Madhu Mohan Damodhar, Member (Technical)

Date of Hearing / Decision: **24.04.2018**

Final Order No. **41322 / 2018**

Per Bench

Brief facts are that the appellant who is a proprietor is engaged in the business of conducting training / coaching programme on personality development as well as English speaking course. On scrutiny of records, it was noticed that the appellant was not discharging service tax under the category of 'Commercial Training or Coaching Service'. Department was of the view that the said activity falls under 'Commercial Training or Coaching Service'. Show cause notice was issued proposing to demand service tax along with interest and for imposing penalties. After due process of law, the original authority confirmed the demand on both the categories along with interest and imposed penalties. In appeal, Commissioner (Appeals) upheld the demand, interest and penalty imposed under Section 78 of the Finance Act, 1994 but however set aside the penalty imposed under Section 76 of the Act. Aggrieved, the appellant is now before the Tribunal.

2. On behalf of the appellant, ld. counsel Shri G. Natarajan submitted that the appellant is contesting the demand of service tax on 'Commercial Training or Coaching Service'. English speaking course, personality development course and human resource development course is aimed at improving the skills of the participants so as to provide them get job or undertake self-employment and therefore would fall under the exemption Notification 9/2003 dated 20.6.2003 being vocational course. He relied upon the decision in the case of C.S. Natarajan & Ors. Vs. Commissioner of Service Tax, Chennai vide Final Order No. 40978 to 40983/2018. He submitted that the Tribunal has relied upon the decision in the case of Mariya Computer Systems (P) Ltd. Vs. Commissioner of Central Excise, Bhopal – 2017 (49) ELT 539 (Tri. Del.). With regard to the demand on franchisee service, he submitted that

the appellant is liable to pay the service tax on such service and is contesting the demand on the ground of limitation. During the period there was change in the definition of franchisee service and the appellant was under confusion whether he would fall under the said category and did not discharge service tax only due to confusion in interpretation. That there was no deliberate intention to evade payment of service tax.

3. The ld. AR Shri S. Govindarajan reiterated the findings in the impugned order.

4. Heard both sides.

5. The main issue for consideration is whether the appellant is liable to pay service tax under 'Commercial Training or Coaching Service' for the courses which include personality development course, English speaking course and human resource development course. The Tribunal in the case of C.S. Natarajan (supra) has considered identical facts wherein it has been held that the said courses would fall under the category of vocational training course. The Tribunal has followed the decision in Mariya Computer Systems (P) Ltd. (supra). Following the decision in the said final order, we are of the view that the demand in respect of 'Commercial Training or Coaching Service' cannot sustain and requires to be set aside which we hereby do.

6. The ld. counsel has vehemently argued that the appellant had failed to discharge service tax in respect of franchisee service due to the confusion in the change of the definition of franchisee service. The period involved is 1.7.2003 to 30.9.2006 when the definition of franchisee service underwent changes for more than one time. Taking into consideration that there was confusion in interpretation due to changes in the definition, we are of the view that by invoking section 80 of the Finance Act, 1994, the penalty imposed in respect of franchisee service requires to be waived. Ordered accordingly.

7. In the result, the impugned order is modified to the extent of setting aside the demand in respect of 'Commercial Training or Coaching Service' and the penalty imposed in respect of 'franchisee service' without disturbing the demand or interest in respect of franchisee service. The appeal is partly allowed in the above terms, with consequential relief, if any.

(Operative portion of the order was
pronounced in open court)

(**Madhu Mohan Damodhar**)
Member (Technical)

(**Sulekha Beevi C.S.**)
Member (Judicial)

Rex