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

Application No.: ST/Misc[CT]/41608/2017
Appeal No.:ST/00138/2011

(Arising out of Order-in-Original No. 20/2010 dated 30.11.2010 passed by the Commissioner of Central Excise, Chennai IV Commissionerate)

M/s. CSC Computer Education (P) Ltd. : Appellant

Vs.

The Commissioner of Service Tax, Chennai : Respondent
[sought to be changed to:
"The Commissioner of G.S.T. & Central Excise, Chennai South Commissionerate"]

Appearance:-
Shri. G. Natarajan, Advocate
for the Appellant
Shri. K. Veerabhadra Reddy, JC (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:**31.07.2018**

Date of Pronouncement:17.08.2018

Final Order No. 42257 / 2018

Per Bench,

The appellants are engaged in providing Commercial Coaching and Training Service and Franchise Service and are registered with the Service Tax Department. Consequent to Audit of Accounts, it was noticed that the appellants had short paid the service tax under both these categories and had also not discharged service tax under Business Auxiliary Services (BAS). Show Cause Notice was issued proposing to demand the service tax along with interest and also for imposing penalties. After due process of law, the Original Authority vide Order dt. 30.11.2010 confirmed the following demands :

(i) Confirmation of demand of service tax of Rs. 1,86,91,417/- under Franchise Service, along with applicable interest.

(ii) Confirmation of demand of service tax of Rs. 1,03,87,552/- under Commercial Coaching and Training Service, along with applicable interest.

(iii) Confirmation of demand of service tax of Rs. 4,96,720/- under Business Auxiliary Service, along with applicable interest.

(iv) Confirmation of demand of Rs. 22,705/- under Section 73 A of the Finance Act, 1994, along with applicable interest, on the ground that to this extent service tax collected has not been paid to the Government, due to the rounding off done by the appellant.

(v) Imposition of a penalty of Rs. 2,95,98,394/- under Section 78 and Rs. 5,000/- under Section 77 of the Finance Act, 1994.

Aggrieved, the appellants are now before the Tribunal.

2.1 The Ld. Counsel Shri. G. Natarajan appeared and argued on behalf of the appellant. He submitted the details of the demand which is tabulated as below :

I. Demand of Service Tax under Franchise Service (2003-04 to 2007-08) :

Sl. No.	Details of demand	Value (in Rs.)	ST Payable (in Rs.)	ST Paid (in Rs.)	ST Demanded (in Rs.)	Defence
1.	ST demanded on Caution Deposit	1200020/-	114824/-	0	114824/-	Not being contested
2.	Demand based on P & L Account	61602019/-	7138646/-	5722324/-	1416322/-	ST properly paid on realization basis
						Levy is only from 01.07.2003 and whole year royalties considered
3.	Demand on sale of administrative material and promotion	80681316/-	9482015/-	0	9482015/-	These materials are sold to the franchisees and hence no ST can be demanded

	materials to franchisees					Demand is confirmed under Rule 5 of the Service Tax (Determination of Value) Rules, 2006, which has been struck down by Delhi HC/SC.
4.	Demand on course materials supplied by CSC Publications and Ramiah Publications	62425254/-	7678256/-	0	7678256/-	These materials are sold by distinct entities to the franchisees These represent the value of materials sold to the franchisees and hence no ST can be demanded
			24413741/-		**18691417/-**	

II. Demand of S.T. under Commercial Coaching or Training Service (2003-04 to 2007-08) :

Sl. No.	Details of demand	Value (in Rs.)	ST Payable (in Rs.)	ST Paid (in Rs.)	ST Demanded (in Rs.)	Defence
1.	Demand based on Profit and Loss Account	29351735/-	3276992/-	2545126/-	731866/-	ST properly paid on realization basis
2.	Training provided to Govt. Staff and Private Companies	1216388/-	132364/-	0	132364/-	Benefit of exemption as "computer training institute" and "vocational training institute"

						available up to 15.06.2005 (Notif. 19/2005)
3.	Sale of course materials to students	43827737/-	5012804/-	0	5012804/-	These materials are sold to the students and hence no ST can be demanded
4.	Examinatio n fee and other charges	8342275/-	850912/-	0	850912/-	
5.	Hardware training fee	380200-/	38780/-	0	38780/-	Benefit of exemption of "computer training institute" and "vocational training institute" available up to 15.06.2005
6.	Service provided to Department of School Education	23023000/-	3400826/-	0	3400826/-	Essential character of the service is providing computer hardware to schools on lease basis, which was taxable only from 16.05.2008 Benefit of exemption under Notification 10/2003 is admissible
7.	JDC Summer Class	237604/-	24236/-	0	24236/-	Benefit of exemption of "computer training institute" and "vocational training institute" available up to 15.06.2005
8.	Computer rent and hire	1707530/-	195765/-	0	195765/-	Essential character of the service is providing

	charges, including TNOU courses					computer hardware to schools on lease basis, which was taxable only from 16.05.2008
						Benefit of exemption under Notification 10/2003 is admissible
			12932678/-	**2545126/-**	**10387552/-**	

III. Demand of Service Tax under Business Auxiliary Service & Demand due to rounding off (2003-4 to 2007-08) :

Sl. No.	Details of demand	Value (in Rs.)	ST Payable (in Rs.)	Defence
1.	Incentive from Tally	4036848/-	474982/-	It Is in the nature of quantity discount for the purchases made
2.	Sale of TNOU Forms	183236/-	21739/-	No BAS involved
3.	Demand due to rounding off		22704/-	Not pressed by the appellant
			519425/-	

2.2.1 The **first** table relates to demand of service tax under **Franchise Service**.

2.2.2 With respect to the demand made on Caution Deposit as shown in **Sl. No. 1** in the above table, it is submitted by the Ld. Counsel that the appellant has discharged the entire service tax payable on this count. He adverted to page 187 and 188 of the appeal paper book and submitted that the appellant has paid an amount of Rs. 1,14,824/- and the demand raised on the ground of Caution Deposit received by the appellant is thus discharged fully.

2.2.3 In respect of the demand in **<u>Sl. No. 2</u>** based on the difference in figures shown in ST-3 returns and the Profit and Loss (P&L) Account, it is explained by the Ld. Counsel that the difference is because of the fact that during the disputed period the service tax was payable on realization basis whereas the figures appearing in the Profit and Loss Account is shown on accrual basis.

2.2.4 A demand of Rs. 9,48,2015/- is made in **<u>Sl. No. 3</u>** in respect of sale of administrative materials and promotion materials to Franchisees. It is submitted by the Ld. Counsel that these materials were sold by the appellants to the Franchisees. No service tax can be demanded on a transaction of sale. It is also argued by him that the demand is raised invoking Rule 5 of the Service Tax (Determination of Value) Rules, 2006 and the said rules have been struck down by the Hon'ble Apex Court in the case of ***Union of India Vs. Intercontinental Consultants and Technocrats Pvt. Ltd. – 2018 (10) G.S.T.L. 401 (S.C.).***

2.2.5 The demand shown in **Sl. No. 4** is with regard to the course materials supplied by CSC Publications and Ramiah Publications. He submitted that these concerns are different and independent entities, who are engaged in publishing the study materials and books for the courses provided by the appellant. The Department has raised the demand merely for the reason that these concerns are owned by family members of the Managing Director of the appellant. Being separate, independent entities, the value in their accounts cannot be made subject of demand of service tax on the appellant. Moreover, the values represented sale of study materials and books and no service tax can be demanded on the same.

2.3.1 The **second** table relates to the demand raised under **Commercial Coaching or Training Services.**

2.3.2 The demand in **Sl. No. 1** in this table is in respect of the difference in figures contained in the ST-3 returns and the Profit and Loss Account. The argument in respect of Franchise Service was reiterated by the appellant for this demand also.

2.3.3 In **Sl. No. 2**, the demand is raised with regard to the training provided to government staff and private companies. The Ld. Counsel adverted to the various exemption Notifications which were in force during the disputed period and argued that Computer Training Institute was exempted by Notification No. 09/2003-ST dt. 20.06.2003 and further, vide Notification No. 01/2004-ST dt. 04.02.2004. Thus, the training provided to government staff and private companies would be eligible for exemption up to 30.06.2004. The Ld. Counsel, however, fairly conceded that for the period after 30.06.2004, the exemption Notification 24/2004 dt. 10.09.2004 did not expressly exempt Computer Training Institutes. But the Notification exempts Vocational Training Institutes. Since the training was imparted to government staff and private companies, the exemption available to Vocational Training Institute would not be eligible for training imparted to Government Employees and private individuals as these people are already employed. That the appellant is thus admitting the liability on this count after the period 30.06.2004.It is also submitted by him that the appellant has paid up the amount for the period after 30.06.2004.

2.3.4 In regard to **Sl. No. 3**, the demand is raised on sale of course materials to students and reiterated the arguments in regard to Franchise Service and submitted that service tax cannot be demanded on the transaction of sale of course materials to students.

2.3.5 The demand raised in **<u>Sl. Nos. 4 and 5</u>** is with regard to computer training imparted to various schools as per the agreement entered with the Tamil Nadu Education Department. He submitted that up to 30.06.2004, the Notification No. 09/2003 and 01/2004 exempted computer training from the levy of service tax. After 30.06.2004, the Notification No. 24/2004-ST dt. 10.09.2004 though did not specifically mention Computer Training Institutes to be exempted, it was mentioned in the Notification that Vocational Training Institute and Recreational Training Institute are exempted. Since the computer training was imparted to students which would help them to seek employment or undertake self-employment after such training/coaching, the same would fall under vocational training and therefore, the appellant is eligible for exemption under Notification No. 24/2004. To support this argument, he relied upon the decision in the case of ***C.C.E. Meerut-I Vs. Doon Institute of Information and Techno. P. Ltd.- 2014 (35) S.T.R. 711 (Uttarakhand)***. After 10.09.2004, the Notification No. 19/2005 dt. 07.06.2005 came into force on 16.06.2005. This Notification expressly excluded computer training from the exemption given in Notification No. 24/2004. Thus, after 16.06.2005, the exemption is not available for computer training courses. The appellant would therefore be eligible for exemption up to 16.06.2005. They have paid up the demand after the period post 16.06.2005 along with interest.

2.3.6 In regard to the demand raised in **Sl. Nos. 6 and 8**, the Ld. Counsel took us through the agreement entered into by the appellant with the Contractor of School Education, Madras dt. 11.01.2001 and submitted that the contract was mainly for leasing of computer hardware and software and connected accessories. Though there was also agreement for imparting Computer Education Services in Government Higher Secondary Schools, the training character of the agreement was for providing computer hardware to schools on lease basis. This would fall under the category of "Supply of Tangible Goods" and would not fall under "Computer Training Services". The Ld. Counsel submitted that the appellant is also entitled for exemption from payment of service tax on the said activity in terms of Notification No. 10/2003-ST dt. 20.06.2003. The said Notification exempts the taxable services provided by a commercial training or coaching centre in relation to commercial training or coaching which forms an essential part of a course or curriculum. Computer training which was imparted by the appellants as per the agreement, was part of the course/curriculum of these schools and therefore, the exemption under Notification No. 10/2003 would squarely cover the activity. That therefore the appellant is not liable to pay service tax for the demand raised in Sl. No. 6 in the above table.

2.3.7 In regard to the demand for Junior Diploma Course (JDC) Summer Classes in **Sl. No. 7**, the Ld. Counsel submitted that the appellant is not contesting the same.

2.3.8 In regard to the demand raised in **Sl. No. 8**, it is argued by the Ld. Counsel that the amount involves computer renting and hire charges including the training imparted to the students. The very same arguments for Sl. No. 6 would be applicable to this demand also. Thus, it was mainly for leasing out computer hardware and a part of the agreement also was for giving coaching to the students. The computer coaching being part of the course/curriculum of the school, the appellant is eligible for exemption under Notification No. 10/2003.

2.4.1 The **third** table relates to the demand raised under **Business Auxiliary Services & Demand due to rounding off.**

2.4.2 In **Sl. No. 1**, the Department has made demand under Business Auxiliary Services (BAS) on the incentive received by them from M/s. Tally. For providing training in the field of Accounting

Software Packages, the appellant was using tally package and this was used to train the students. The tally kits (in the form of books, development by M/s. Tally) were used for that purpose. This was purchased by the appellant from M/s. Tally Sales P. Ltd. Based on the number of packages purchased, M/s. Tally would give incentive to the appellant. The Department alleges that the appellant is engaged in promotion or marketing or sale of goods produced belonging to the client and thus, has demanded service tax under the category of Business Auxiliary Services. He argued that the incentive is only in the nature of quantity discount for the purchases made and, therefore, cannot be subject matter of service tax.

2.4.3 In **Sl. No. 2** of the third table, the demand is raised on the amount received for sale of application forms of Tamil Nadu Open University (TNOU). The appellant is one of the recognized study centres for Tamil Nadu Open University to impart computer related courses. The prospectus and application forms for admission into TNOU courses are sold by the appellant. The forms are sold by the appellant at the same price by which they purchased; while purchase, the same is accounted as TNOU application forms and expenses. Thus, it is partly purchase and partly sale and the appellant is not at all promoting any product manufactured by

TNOU or services offered by TNOU. Thus, these do not fall under Business Auxiliary Services. Further, TNOU is a unit of the Government of Tamil Nadu, providing education and is not at all a business proposition.

2.4.4 In **Sl. No. 3** of the said table, a demand of Rs. 22,704/- has been raised, alleging that the appellant has short paid the duty due to rounding of the figures. The Ld. Counsel was fair enough to submit that the appellant is not contesting this liability and has paid up the same.

3.1 The Ld. AR Shri. K. Veerabhadra Reddy supported the findings in the impugned order.

3.2 With regard to the demand raised in **Sl. No. 1** in the table relating to **Franchise Service**, the Ld. AR submitted that admittedly, there is a difference in the figures mentioned in the ST-3 returns as well as the Profit and Loss Account. Though the appellant explains that it is due to the reason that service tax is payable on realization basis and the figures shown in Profit and Loss Account is on accrual basis, no such plea has been put forward before the adjudicating authority. Therefore, the said contention cannot be accepted without verification.

3.3 With regard to the demands raised in **<u>Sl. Nos. 3 and 4</u>** in the said table relating to **Franchise Service**, the Ld. AR reiterated the findings in the impugned order.

3.4 In respect of the demand raised in **<u>Sl. No. 2</u>** relating to **Commercial Coaching and Training Service**, the Ld. AR submitted that the demand raised is correct and proper.

3.5 Countering the arguments put forward by the Ld. Counsel in respect of **<u>Sl. Nos. 4, 5 and 6</u>** of the said table, the Ld. AR submitted that after 30.06.2004, the appellants are not eligible for exemption of service tax for computer training courses. The legislative intent is very much clear from Notification No. 24/2004-ST dt. 10.09.2004. The Notification, by its amendment, has excluded computer training institutes. The services provided by Vocational Training Institute or Recreational Training Institute are only exempted under Notification No. 24/2004. Computer training will not fall within the category of Vocational Training Institute. The subsequent Notification No. 19/2005 has expressly excluded the Computer Training Institute from the purview of exemption of service tax. The legislative intent therefore is very much clear to remove the exemption provided to computer training institutes. Thus, after

30.06.2004, the appellant cannot claim exemption up to 16.06.2005, contending that Computer Training Institute would fall within the category of Vocational Training Institute.

3.6 It is also argued by the Ld. Counsel that the appellant has imparted computer training to the students as per the agreement entered into with the Education Department. There is no evidence to show that this training was part of the course or curriculum of such schools, leading to issuance of any certificate or diploma recognized by law. For this reason, the contention of the appellants (eligible for exemption as per Notification 10/2003) cannot be accepted.

3.7 In regard to the demand of service tax in **Sl. No. 1** under **Business Auxiliary Services** on the incentive received from Tally, the Ld. AR submitted that the appellants are using the said software and are being paid discounts based on the purchases made. This is nothing but promotion of their software packages and programmes and, therefore, is taxable under Business Auxiliary Services. It is also argued by him that the amount received for sale of forms of TNOU would also be covered under the activity of promotion of sales of the University and therefore, is taxable under BAS.

4. Heard both sides.

5.1 Let us consider each as per the tables furnished above.

I. Demand of Service Tax under Franchise Service (2003-04 to 2007-08)

5.2.1 In **Sl. No. 1** of the table relating to Franchise Service, the demand is in respect of the Caution Deposit collected by the appellants. The Ld. Counsel has submitted that they have discharged the service tax liability on this count. In page number 187 to 188 of the appeal paper book, the appellant has enclosed the challans in respect of the service tax paid on this count. We are, therefore, convinced that the appellant has discharged the service tax and the demand is upheld.

5.2.2 The demand in **Sl. No. 2** in this table is with respect to the difference in the figures in the Profit and Loss Account as well as the ST-3 returns. The Ld. AR has adverted to para 6.4 of the Order-in-Original. Though the Ld. Counsel for the appellant contends that the difference in figures is due to the fact that service tax is payable on realization basis whereas the figures in the Profit and Loss Account is mentioned on accrual basis, we do not find any such plea taken before the adjudicating authority. As pointed out by the Ld. Counsel, the appellant admits that there is some difference in the figures. The fact as to what is the reason for the difference has to be verified by the adjudicating authority and for this reason, we hold that this issue has to be ***remanded*** to the adjudicating authority.

5.2.3 In **Sl. No. 3**, the demand is in respect of administrative materials and promotion materials sold to the Franchisees. Even as per the Show Cause Notice, the allegation is that these course materials, administrative materials, promotion materials, etc., are part and parcel of the Franchise Service and are sold to the Franchisee. When the Department itself admits that the amount is collected for the sale of such materials, the demand of service tax on the same cannot sustain. It is clarified by the Ld. Counsel for appellant that being books and study materials, these are not subject to levy of VAT. Thus, we hold that the demand raised on the cost recovered from the Franchisees for supply of course materials and administrative materials cannot sustain and requires to be ***set aside***, which we hereby do.

5.2.4 In **Sl. No. 4**, the demand is raised on course material kit supplied by CSC Publications and Ramiah Publications. It is very much clear from the Show Cause Notice as well as from the impugned order that the amounts for the supply of such study materials are collected by CSC Publications and Ramiah Publications and not by appellants. In such event, the amount received by CSC Publications and Ramiah Publications, who are independent entities, cannot be included in the taxable value of the appellant. In any case, it is settled law that study materials supplied cannot be included in the taxable value for levy of service tax. Thus, the demand raised on the ground of amount received by CSC Publications and Ramiah Publications for supply of study materials to the Franchisee cannot sustain and requires to be ***set aside*** which we hereby do.

II. Demand of S.T. under Commercial Coaching or Training Service (2003-04 to 2007-08)

5.3.1 In Sl. No. 1 in the above table relating to Commercial Coaching and Training Service, the demand is based on the difference in the figures shown in ST-3 returns and Profit and Loss Account. Considering the arguments put forward by the Ld. AR on the same issue with regard to Franchisee Service, we are of the opinion that this issue also requires to be ***remanded*** to the adjudicating authority.

5.3.2 In **Sl. No. 2**, the demand is raised for the amount received for imparting training to government staff and private companies. The Ld. Counsel for appellant has been fair enough to submit that as per

Notification No. 09/2003 and 01/2004 Computer Training Institutes were exempt from service tax only till 30.06.2004 and therefore, after 30.06.2004 they are liable to pay the service tax. We find the said contention to be legally correct and we hold that the demand prior to 30.06.2004 cannot sustain and requires to be ***set aside***, which we hereby do. We make it clear that the appellant is liable to pay service tax after 30.06.2004 on this count, and uphold the same.

5.3.3 In **Sl. No. 3**, the demand is made in respect of amount received by the appellant for sale of course materials to students. In para 7.4 of the impugned order, the adjudicating authority has confirmed the demand stating that it is clarified that the textbooks supplied are standard textbooks and therefore, the study materials cannot be out of the levy of service tax. It is settled law that the study materials supplied cannot be subject to levy of service tax. Further, as per the Show Cause Notice itself, the amount is collected by sale of study materials to the students. No service tax can be levied on the transaction of sale and, therefore, the demand raised on this count requires to be ***set aside***, which we hereby do.

5.3.4 In respect of the demand raised in **Sl. Nos. 4 and 5**, the Ld. Counsel has submitted that these are demands relating to the computer training imparted to students. He has contended that up to 16.06.2005, Computer Training Institute is exempted from levy of service tax and therefore, the demand can sustain only post 16.06.2005. The Ld. AR has vehemently opposed this contention of the appellant stating that after 30.06.2004, the Notification No. 24/2004 has excluded Computer Training Institutes from the purview of exemption. The appellant is seeking shelter under the category of Vocational Training Institute mentioned in Notification No. 24./2004. It is correct that as per Notification No. 19/2005 which has come into force on 16.06.2005, the Computer Training Institutes have been removed from the purview of exemption granted by Notification No. 24/2004.

5.3.5 The issue has been addressed by the various judgments of the Hon'ble High Court of Uttarakhand. In the decision of *Doon Institute of Information and Techno. P. Ltd. (supra)* it was held that "Computer Training Institute" would fall under "Vocational Training Institute" in terms of Notification No. 24/2004 until 16.06.2005. The relevant portion is reproduced as under :

> "**3.** *On 10th September, 2004, when the original Notification No. 24/2004-Service Tax was notified, thereby, vocational training institutes and recreational training institutes were accorded exemption, but not the computer training institutes. Computer training institutes, therefore, could not be covered by the exemption accorded by the Notification dated 10th September, 2004. 10th*

> *September, 2004 Notification is an independent Notification. The same did not refer to any earlier Notification. Therefore, in the matter of interpreting the Notification dated 10th September, 2004, one has to read only the words used in that Notification and cannot borrow any words from any other Notification. By this Notification, there is no dispute that exemption was accorded to vocational training institutes. Vocational training institutes had been defined by the Notification. It said that a vocational training institute shall mean a commercial training or coaching center, which provides vocational training or coaching that imparts skill to enable the trainee to seek employment or undertake self-employment directly after such training or coaching. In absence of statutory definition, we have to proceed on the basis of the ordinary meaning of the word "vocational", which means "relating to an occupation or employment; directed at a particular occupation and its skills". It cannot be questioned that skill pertaining to computer software and hardware is required to be acquired and, at the same time, it cannot be disputed that once such a skill is acquired, it throws open the door of an occupation relating to computer software and hardware, which entails employment or self-employment. Inasmuch as nothing was mentioned in the Notification dated 10th September, 2004 as regards computer training institutes, it cannot be said that the 10th September, 2004 Notification made any distinction in between a vocational training institute and a computer training institute, as was made on 20th June, 2003. In that background, we find that the Tribunal cannot be said to have erred by holding out that the respondent assessee was a vocational training institute, but we make it clear that it was so in terms of the Notification dated 10th September, 2004 until 16th June, 2005, i.e. when the concept of computer training institute was introduced for the first time in the Notification dated 10th September, 2004. Having had said so, we find no scope of interference. The Appeal fails and the same is dismissed."*

5.3.6 Following the same, we are of the view that the appellant is eligible for exemption up to 16.06.2005. The demand for the period up to 16.06.2005, therefore, requires to be ***set aside,*** which we hereby do. We make it clear that the appellant is liable to pay service tax from 16.06.2005 along with interest.

5.3.7 In **<u>Sl. No. 6</u>** of the table, computer training has been imparted to schools as per the agreement entered into with the Education Department of Tamil Nadu. The Ld. Counsel has strongly argued that the essence of this agreement is for leasing of computer hardware, software and connected accessories. We find that the agreement also has stipulations for imparting computer training. It is the case of the Ld. Counsel that even if the appellant has imparted computer training to the students of these schools as per the agreement, the same would be eligible for ***exemption*** under Notification No. 10/2003. For better appreciation, the exemption contained in the above Notification is reproduced as under :

> *"In exercise of the powers conferred by section 93 of the Finance Act, 1994 (32 of 1994), the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts the taxable services provided by a commercial training or coaching centre, in relation to commercial training or coaching, which form an essential part of a course or curriculum of any other institute or establishment, leading to issuance of any certificate or diploma or degree or educational qualification recognised by law for the time being in force, to any person, from the whole of the service tax leviable thereon under sub-section (2) of section 66 of the said Act :*
>
> *Provided that this exemption shall not be applicable if the charges for such services are paid by the person undergoing such course or curriculum directly to the commercial training or coaching centre.*
>
> *2. This notification shall come into force on the 1st day of July, 2003."*

5.3.8 It is seen from the agreement that basic computer education has been made compulsory for the Government schools by the Government of Tamil Nadu and the appellant has been awarded the contract to provide the hardware, software as well as for imparting training to the students. It is very much clear that the training imparted by the appellants is according to the syllabus, as approved by the Government of Tamil Nadu. Such training does form part of the course/curriculum of school education and we are of the considered opinion that the appellant is eligible for ***exemption*** under Notification No. 10/2003. We have perused the scope of the contract enclosed in page 211 of the appeal paper book. Clause (c) to (g) of the said contract reads as under :

> *" .*
> *.*
> *.*
>
> ***(c) Teach (10+2) Computer Science syllabus as approved by Government of Tamil Nadu for Plus 1 and Plus 2 students. The prescribed text book available should be used. For practical class one system is to be provided for two students.***
>
> ***(d) Teach 9th and 10th standard students Computer Science syllabus as approved by Government of Tamil Nadu twice a week consisting of 2 periods of 45 minutes each.***
>
> ***(e) Teach basic computer literacy to 11th and 12th students who have not opted for computer science as an optional subject during the extended period after the close of regular class periods. For this purpose, the tenderer must extend the class periods by one more period in the evening after the regular periods are over.***
>
> ***(f) Teach 6th to 8th standard students Computer Science syllabus as approved by Government of Tamil Nadu also twice a week consisting of 2 periods of 45 minutes each.***
>
> ***(g) For the Computer appreciation course to the 6th to 10th students Practical training in Computer should be given."***

5.3.9 In respect of the demand raised in **<u>Sl. No. 7</u>** on JDC Summer Classes, the Ld. Counsel at the time of hearing submitted that the appellant is ***not contesting*** the same and has paid up the amount in respect of this demand.

5.3.10 In **Sl. No. 8**, the demand is raised on the income received from computer rentals. The Ld. Counsel has submitted that the said agreements included both renting/leasing of computer, computer hardware/software, etc., and also imparting courses to the students. The discussions made in respect of *Sl. No. 6 above*, applies to the demand made under this category also. The rent income received for leasing the computer hardware, etc., cannot be taxed under Computer Training Services. In any case, these agreements include imparting computer training to the students and therefore, as argued by the Ld. Counsel for the appellant, the benefit of exemption under Notification No. 10/2003 would be applicable to the appellant and the case law as discussed above would squarely cover the said issue. For these reasons, we hold that the demand in respect of Sl. No. 8 cannot sustain and requires to be ***set aside***, which we hereby do.

III. Demand of Service Tax under BAS & Demand due to rounding off (2003-4 to 2007-08)

5.4.1 In **<u>Sl. No. 1</u>**, with respect to the demand raised under Business Auxiliary Services, the incentives received from M/s. Tally has been subject to levy of service tax. We find that the said issue as to whether the incentives received for the use of software would be subject to levy of service tax, has been decided in the case of ***D. Pauls Consumer Benefit Ltd. Vs. C.C.E. (New Delhi) – 2017 (52) S.T.R. 429 (Tri. – Del.).*** Following the same we are of the view that the demand on this count is legal and proper and we ***uphold*** the same.

5.4.2 In **<u>Sl. No. 2</u>** of this table, the demand is raised on sale of forms of Tamil Nadu Open University. In the Show Cause Notice as well as the impugned order, it is seen that the appellant has purchased and sold the forms at the actual price. We do not find any ingredients attracting the levy of service tax under Business Auxiliary Services in this activity. We, therefore, hold that the demand raised on this count cannot sustain and requires to be ***set aside***, which we hereby do.

5.4.3 In **<u>Sl. No. 3</u>**, a demand of Rs. 22,704/- has been raised, being the short paid tax by the appellant due to rounding off. The Ld.

Counsel has submitted that the appellant is not contesting the said demand. The same is ***upheld***.

6. The issues involved in all the three services are mostly interpretational, especially with regard to the exemption Notification as to whether Computer Training Institute would be eligible for exemption as also with regard to the exemption under Notification No. 10/2003. Further, there were issues with quantification. Being interpretational issues, we are of the considered opinion that the **penalties** on the demands upheld by us as above cannot sustain and require to be **set aside**, which we hereby do.

7. To sum up : -

(i) The demand raised on account of the **difference in ST-3 returns and P & L Account** in respect of both Franchise Service and Commercial Coaching or Training Service is **remanded** to the adjudicating authority for fresh consideration.

(ii) The **demands** set aside are discussed separately **as above**.

(iii) The **penalties** are **set aside** *in toto.*

8. The Department has filed Miscellaneous Application No. ST/Misc[CT]/41608/2017 for change in the name of the respondent in the cause title of Appeal Nos. ST/00138/2011 consequent to the introduction of G.S.T. and the resultant change in jurisdiction. It is prayed that the name and address of the respondent be changed to :

"The Commissioner of G.S.T. & Central Excise,
Chennai South Commissionerate,
MHU Complex, 692, Anna Salai,
Nandanam, Chennai 600035"

9. M.A. filed by the Department for change in cause title is allowed. Registry is directed to amend the cause title as prayed for. The appeal is partly allowed and partly remanded in the above terms.

*(Pronounced in open court on **17.08.2018**)*

(Madhu Mohan Damodhar)	**(Sulekha Beevi C.S.)**
Member (Technical)	Member (Judicial)

Sdd