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

Appeal No.: ST/00300/2011

(Arising out of Order-in-Original No. 7/2011-S.Tax dated 21.02.2011 passed by The Commissioner of Central Excise, Chennai-IV Commissionerate)

M/s. Digital Magic Visual India Ltd. : Appellant

Vs.

The Commissioner of Service Tax, Chennai : Respondent

Appearance:-
Shri. S. Viswanathan, Advocate
for the Appellant

Shri. B. Balamurugan, 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:**16.08.2018**

Final Order No. 42266 / 2018

Per Bench,

Brief facts are that appellants are providing courses through Digital Magic Animation Academy (DMAA) in Drawing, Clay Modelling, Matte Printing, Animation and Visual Effects, Still Motion Photography and Acting. Appellants were claiming exemption from service tax liability under Vocational Training vide

Notification 24/2004-ST dt. 10.09.2004. Department took the view that the said activities would not amount to improving the technical skills of trainees and hence, they are not eligible for the said Notification and would be liable to pay service tax under Commercial Training and Coaching Service (CTC Service) for the period 2006-07 to 2008-09 with interest thereon.

2. Pursuant to audit of the appellant's records, it appeared to the Department that appellants had not paid/short paid the service tax liabilities as under :

i. Commercial Training and Coaching Service (CTC Service) to the extent of Rs. 30,73,675/- for the period 2006-07 to 2008-09 with interest thereon.

ii. Video Production Services amounting to Rs. 16,29,611/- (non-payment) for the period April, 2008 to March, 2009; and

iii. Rs. 87, 905/- (short payment) for the period April, 2004 to March, 2008.

iv. Irregular availment of CENVAT credit on capital goods amounting to Rs. 2,34,384/- for the period 2004-05 to 2007-08;

v. Interest liability arising on account of delayed payment of service tax amounting to Rs. 1,19,091/- for the period 2004-05 to 2007-08.

3. Accordingly, a Show Cause Notice dt. 16.10.09 was issued to the appellants wherein the above amounts as indicated in Annexure-II to the Notice was proposed to be demanded with interest liability thereon. In another Annexure A to the Notice, the proposed tax liability of Rs. 16,29,611/- was reduced by way of input credit adjusted and net tax difference was indicated as Rs. 14,60,620/-. In adjudication, all these tax liabilities proposed in the Show Cause Notice were confirmed with interest and penalties were also imposed under Section 70(a) and 78 of the Finance Act, 1994. Late fee of Rs. 4,000/- was also imposed under Section 70 ibid.

4. Today when the matter came up for hearing, the Ld. Advocate submits that the demands raised in Sl. No. (ii) to (v) are conceded by them.

5. That out of the demands indicated at Sl. No. (i) to (v) they are contesting only the demand of Rs. 30,73,675/- with interest [Sl. No. (i)] and are conceding the remaining demands. However, in respect of the demand of Rs. 16,29,611/- in respect of Video Tape Production

Services, the Ld. Advocate submits that as per Annexure A to the Show Cause Notice, the proposed demand had been reduced to Rs. 14,60,620/-. However, the adjudicating authority has confirmed an amount of Rs. 16,29,611/- Now, in respect of the demand of Rs. 30,73,675, the Ld. Advocate submits that this relates to computer based courses; that the appellant issued a diploma certificate after completion of the course. These courses are in the nature of Vocational Courses and provide employment after completion of the same. Ld. Advocate drew our attention to the recognition given by Indira Gandhi National Open University (IGNOU) dt. 20.11.2010 to the appellant for starting a community college and also the details of students who have taken the course and the employment obtained by them in a number of courses from pages 102 to 142 of the appeal book. Ld. Advocate submits that they are eligible for the exemption under Notification 24/2004-ST and he also submits that the requirement for the vocational courses to be in designated rates as Notification under The Apprentices Act, 1961 came about only vide the Notification No. 3/2010 dt. 27.02.2010. However, the dispute in respect of the appellant is prior to that date.

6. On the other hand, the Ld. AR supports the impugned Order. He draws our attention to para 5.5 of the impugned Order where

the adjudicating authority has held that the vocational training should have been in designated rates as Notification under The Apprentices Act, 1961, which is not the case with respect to the courses offered by the appellant.

7. Heard both sides and have gone through the facts.

8.1 As per Notification24/2004, service tax leviable under Commercial Training and Coaching Services are exempted for Vocational Training Institute which provides vocational training or coaching that imparts skills to enable the trainee to seek employment or undertake self-employment directly after training or coaching. The relevant portion of the Notification is reproduced as under :

> *"In exercise of the powers conferred by sub-section (1) of section 93 of the Finance Act, 1994 (32 of 1994), the Central Government, being satisfied that it is necessary in the public interest to do so, hereby exempts the taxable services provided in relation to commercial training or coaching, by, -*
>
> *a. A vocational training institute; or*
> *b. A recreational training institute.*
>
> *to any person, from the whole of the service tax leviable thereon under Section 66 of the said Act.*
>
> ***Explanation.** – For the purposes of this Notification. –*
>
> *i. "vocational training institute" means a commercial training or coaching centre which provides vocational training or coaching that impart skills to enable the trainee to seek employment or undertake self-employment, directly after such training or coaching;*

ii. "recreational training institute" means a commercial training or coaching centre which provides training or coaching relating to recreational activities such as dance, singing, martial arts or hobbies.

[Notification No. 24/2004-S.T., dated 10-09-2004]"

The definition of "vocational training courses" continued till the advent of Notification 03/2010 dt. 27.02.2010 wherein the definition of vocational training institute was amended as under :

"(i) vocational training institute means an Industrial Training Institute or an Industrial Training Centre affiliated to the National Council for Vocational Training, offering courses in designated trades as notified under the Apprentices Act, 1961 (52 of 1961)."

8.2 From the facts on record, it is but obvious that the courses offered by the appellant satisfied the requirements of Notification 24/2004 dt. 10.09.2004. The relevant brochure has also been adduced to show that the trainees who have been provided vocational training were able to secure jobs subsequently. The brochure to the file in pages 50 onwards of the paper book also support the contentions of the appellant. In any case, the requirement of the courses being those designated under The Apprentices Act, 1961 cannot be applied to the period of dispute since the concerned Notification 03/2010 was issued subsequently. In the event, we find in favour of the appellants in respect of the dispute concerning demand of Rs. 30,73,675/- with interest thereon.

8.3 With respect to the other demands, we note that the Ld. Advocate has conceded the same. Hence, we do not intend to interfere with the said demands.

8.4 However, in respect of the demand concerning Video Tape Production Services, it is obvious that there is some confusion with respect to the quantum of demand. While the adjudicating authority has confirmed the service tax liability of Rs. 16,29,611/- based on Annexure-II to the Show Cause Notice, another Annexure-A of the same Notice had given a reduction of Rs. 1,68,991/- on account of input credit and indicated the net tax liability proposed as Rs. 14,60,620/-. In the event, for the limited purpose of ascertaining the exact tax liability that is required to be paid by the appellant, this issue is being remanded to the adjudicating authority.

9. Coming to the issue of penalty, we find from paras 5.3 and 5.4 that appellants paid up the amounts of demand of Rs. 2,34,384/- towards wrong credit taken and interest on delayed payment of Rs. 1,28,241/- by cheque on 23.06.2009, the short payment of Rs. 87,905/- and the interest liability thereon of Rs. 1,19,091/- also by

challan dt. 23.06.2009. This being so, we find that except for the demand arising out of Video Tape Production Services, the tax liability was paid up by the appellant. We thus find that there are some mitigating factors in respect of these demands and it is therefore ordered that there shall be no penalties in respect of these demands confirmed.

10. However, coming to the demand on Video Tape Production Services, we find that they had collected the service tax from their customers. Further, Ld. Advocate has also conceded the liability and hence, it is ordered that based on the exact quantum of tax liability, equal penalty shall be imposed pertaining to the amount arrived in the remand for re-quantification, i.e., whether Rs. 16,29,611/- or Rs. 14,60,620/-. The equal penalty under Section 78 shall be applicable in respect of the this demand. No interference is also made with respect to the penalties imposed under Section 70 and 77 of the Act.

11. The impugned Order is modified to the extent of setting aside the demand raised under Commercial Coaching and Training Services. The penalties in respect of demands in (iii) and (iv) in para 2 are set aside. The issue with regard to quantification of demand in

respect of Video Production Services is remanded. The penalty on this issue will be revised as per the re-quantification.

12. The appeal is partly allowed and partly remanded in above terms.

(Dictated and pronounced in open Court)

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

Sdd