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

Appeal Nos.ST/160-162/2012

[Arising out of Order-in-Original No.59 to 61/2011 dt. (MST) dt. 24.10.2011 passed by Commissioner of Service Tax, Chennai]

STC Technologies Pvt. Ltd. — Appellant

Versus

Commissioner of Service Tax,
Chennai — Respondent

Appearance :

Shri N. Viswanathan, Advocate
For the Appellant

Shri K. Veerabhadra Reddy, JC (AR)
For the Respondent

CORAM :

Hon'ble Shri Madhu Mohan Damodhar, Member (Technical)
Hon'ble Shri P. Dinesha, Member (Judicial)

Date of hearing / decision : 07.08.2018

FINAL ORDER No. 42444-42446 / 2018

Per Madhu Mohan Damodhar

The facts of the case are that appellants are engaged in conducting courses of software testing viz. CATE, CSTP, ADST for various students and other clients. Pursuant to an audit, it appeared to the department that appellant committed the following infractions :

(i) The appellants were paying service tax only on 50% of gross amount representing training fees; however, not discharging tax liability of remaining 50% amount representing sale value of the course material. It appeared that the value of course materials would form part of taxable value and hence appellant had not discharged tax liability of Rs.1,12,26,207/- for the period April 2005 to November 2008.

(ii) It was noticed that appellant had not remitted service tax amount from April 2007 to November 2008 in respect of course fee, the liability in this respect, after adjusting cenvat credit was worked out to Rs.19,28,126/-. On being pointed out, appellants remitted an amount of Rs.10,37,881/- leaving a balance amount of Rs.8,90,245/-.

(iii) Although appellant had realized franchise fee during the period 2007-08 and 2008-09 from the franchisees, an amount of Rs.81,920/- towards service tax had not been paid by them under Franchise Service.

(iv) Hence show cause notice dt. 09.04.2009 was issued to appellant proposing demand of service tax liability of **Rs.1,12,98,372/-** with interest thereon and also proposing imposition of penalties under various provisions of law.

2. Subsequent show cause notice dt. 16.04.2010 was issued to the appellants *inter alia* proposing total demand of service tax of **Rs.14,33,552/-** with interest thereon for the period from December 2008 to January 2010 as under :

(i) Demand of service tax of Rs.13,77,254/- with interest thereon in respect of non-discharge of tax liability on value of course materials and books.

(ii) Demand of service tax of Rs.56,298/- with interest thereon on Franchise fees for the same period. Show cause notice also proposed imposition of penalty under various provisions of law.

3. Another show cause notice dt. 20.04.2011 was issued for the period February 2010 and March 2010 proposing demand of service tax liability of Rs.1,07,550/- with interest thereon as also imposition of penalties.

4. All these SCNs were adjudicated by the impugned order No.59 to 61/2011 dt. 24.10.2011 wherein the demands proposed in the SCNs were confirmed with interest thereon. A penalty of Rs.1,21,98,372/- was imposed under Section 78 of the Act. Penalty was also imposed under Section 76 ibid in respect of the demands made for SCNs dt. 16.04.2010 and 20.04.2011. Penalty was also imposed under Section 77 ibid. Hence these appeals.

5.1 When the matter came up for hearing, on behalf of the appellant, Ld. Advocate Shri N. Viswanathan submits that appellant is conceding the following demands with interest liability thereon :

(i) Demands in respect of Franchise Service —

Rs.81,920 (proposed in SCN dt. 09.04.2009) and

Rs.56,298 (proposed in SCN dt. 16.04.2010)

(ii) Short payment of Rs.8,90,245/- in respect of service tax liability for April 2007 to November 2008 (demand proposed in SCN dt. 09.04.2009).

5.2 However, the Ld. Advocate submitted that appellant is contesting the following remaining demands :

(i) In respect of value of books and course material supplied to their students – Rs.1,12,26,207/- (demand proposed in SCN dt.09.04.2009)

(ii) Rs.13,77,554/- (demand proposed in SCN dt. 16.04.2010)

(iii) Rs.1,07,550/- (demand proposed in SCN dt. 20.04.2011)

5.3 Ld. Advocate made the following arguments with regard to demands in respect of value of course materials :

i) The learned adjudicating authority solely relied CBEC's Circular No.59/8/2003 dt.20.06.2003 to hold that the study materials supplied by the appellant in providing the above course were not excludible from the taxable value as they are not standard textbooks relying on Apex Court's decision in CCE Vs. Andhra Sugars Ltd. [1988 (38) ELT 564 and observing that '*it is settled law that the Ministry's clarification issued simultaneously with any exemption notification is equally important for interpretation of Notification'* but failing to mention which of the term used in the above Notification was interpreted by him using the above Circular to hold that only standard textbooks are excludible from the value.

ii) The clarification vide the above CBEC's Circular that only standard textbooks are excludible from the value in terms of Notification No.12/2003-ST dt.20.06.2003 was held to be incorrect by the Hon'ble Tribunal in Pinnacle Vs. CCE [2011 (24) STR 453], which the learned adjudicating authority failed to note and follow. The above decision was affirmed by the Hon'ble Punjab & Haryana High Court vide CCE Vs. Pinnacle [2017 (49) STR 277].

iii) The issue is squarely covered by the decision of the Hon'ble Tribunal in

(a) Cerebral Learning Solutions Pvt. Ltd. Vs. CCE [2013 (32) STR 379]

(b) Chate Coaching Classes Pvt. Ltd. Vs. CCE [2013 (29) STR 138]

iv) Since the materials are connected to the courses and hence are not excludible from the taxable value under Notification No.12/2003-ST is also negative by the Hon'ble Allahabad High Court in CCE Vs. Balaji Tirupati Enterprise [2013 (32) STR 530], which was followed in Electrome Engineering Enterprises Vs. CCE [2016 (46) 676].

v) Further as admitted in the impugned order-in-original, the appellant's invoices showed separate value for fees and materials and the transactions were reflected in their books of account which were seen by the audit officers of the department, from which the relevant details were noted by them. Therefore, allegation of wilful suppression with intention to evade the payment of service tax cannot be hurled at the appellant and hence invocation of extended time limit and consequential imposition of equal penalty is not correct in view of catena of judicial decisions including the decisions of the Tribunal in Punj Llyod Vs. CCE [2015 (40) STR 1028] and Steer Engineering Pvt. Ltd. VS. CCE [2017 (358) ELT 390].

6. On the other hand, on behalf of the department, Ld. A.R Shri K.Veerabhadra Reddy supports the impugned order in respect of the said demands confirmed in respect of value of course material. He drew our attention to para 6.1 of the impugned order where the adjudicating authority has referred to Notification No.12/2003 dt. 26.6.2003 wherein *inter alia*, it was clarified that in cases of commercial coaching and coaching institutes, exclusion from taxable value shall apply only to sale value of standard textbooks which are priced; that any study material or written text provided by such institute as part of service which does not satisfy the above criteria will be subjected to service tax. It is also

pertinent to see from the receipts issued by appellants to students that the whole amount received by them represents the course fee. Ld. A.R also drew our attention to para 6.5 of the impugned order wherein the adjudicating authority has concluded that appellant deliberately adopted 50% of the course fee as charges for course material only to avoid service tax liability.

7. Heard both sides.

8. In respect of the amounts related to Franchise service and short payment referred to in para 5.1 supra, conceded by the appellant, the said demands as confirmed in the impugned order are not interfered with. So ordered.

9.1 However with regard to issue of inclusability of value of course material supplied to appellants, we find that it has been held in a number of Tribunal decisions that the value of such course material is not includible in the taxable value.

9.2 In the case of *Cerebral Learning Solutions Pvt. Ltd. Vs CCE Indore* 2013 (32) STR 379 (Tri.-Del.), the Tribunal inter alia, held as under :

> "**6.** In our considered view, the clarification in the Board Circular dated 20-6-2003 is misconceived, clearly illegal and contrary to the statutory exemption Notification dated 20-6-2003. Where the legislature has spoken or in exercise of its statutory power exemption is granted by the Central Government under Section 93 of the Act, the CBEC has no manner of power, authority or jurisdiction to deflect the course of an enactment or the exemption granted. Grant of exemption from the liability to tax is a power exclusively authorised to the Central Government under Section 93 of the Act. This statutory provision accommodates no participatory role to the Board. In seeking to engraft restrictions on the generality and plenitude of the exemption granted by the Central Government, the CBEC transgressed into the domain of the Central Government under Section 93 of the Act, a course of action clearly prohibited. On the above analysis, that part of the clarification of the CBEC which engrafts a condition that the exemption notification is applicable only where the value of the course material (sold by a commercial or training institute) answers the description of standard text books which are priced, is illegal, unauthorised and of no effect. No notice or cognition can be taken by any authority or such unauthorised exertions by the CBEC. If this illegal and unauthorised condition,

imposed on the generality of exemption granted by the Central Government vide Notification No. 12/2003-S.T., dated 20-6-2003 is ignored, as it must, the assessee/appellant is clearly entitles to the benefit of the exemption.

… … …

9. Shri Dixit would refer to a passage in decision of the Tribunal in *Agarwal Colour Advance Photo System* v. *CCE, Bhopal* reported in 2010 (19) S.T.R. 181. The passage occurs in para 6 of the judgment dealing with question No. 3 framed by the Tribunal, which is whether the term "sale" appearing in exemption Notification No. 12/2002-S.T., dated 20-6-2003 must be considered as in Section 2(h) of the Central Excise Act, 1944 read with Section 65(121) of the Finance Act, 1994 or the term would also include deemed sale, as defined by Article 366(29A)(b) of the Constitution. While referring this issue for consideration to larger bench, an observation is recorded by the ld. DB that under the Finance Act, 1994 providing of service being event of levy, incidence of tax arises on the whole of value of service including materials used in providing such service. These observations are of no relevance to the issues arising in the present appeal before us. The question in this appeal is whether the entire value of the services provided by the appellant herein (including the value of course material supplied) is to be included in the gross value of the service provided by the appellant? The question is also whether the Government has exempted the whole of the value of goods and material sold, from the gross value of taxable service, vide the Notification issued under Section 93(1).

10. The exemption notification is clear and admits no restrictive clauses. Consequently, the assessee is entitled to relief."

9.3 In the case of *Chate coaching Classes Pvt. Ltd. Vs CCE Aurangabad* - 2013 (29) STR 138 (Tri.-Mumbai), the Tribunal observed as under :

"The department has issued clarification vide Circular No. 59/8/2003-S.T., dated 20-6-2003 and as per the said clarification, it was clarified that in case of commercial training and coaching institutes, the exclusion shall apply only to the sale value of standard textbooks, which are priced. Any study material or written text provided by such institute as a part of service which does not satisfy the above criteria will be subjected to service tax. On the basis of this clarification, the demand has been confirmed against the appellant. The said issue came up before this Tribunal in the case of *Pinnacle* (supra) and the same was considered in para 8 of the said decision and it was observed that "It is not in dispute that the activity of the company is to provide coaching. The Revenue has not disputed the fact that the study materials were purchased by the appellants from M/s. Bulls Eye. Therefore, there is nothing in the Notification No. 12/2003-S.T. which would help Revenue in their arguments. The Circular of C.B.E. & C. quoted by the learned DR states that such exemption will be applicable only if material sold is 'standard textbooks'. The question as to what is a 'standard textbook' can lead to disputes. Since the expression is not used in the notification and the fact that the books sold are of another entity namely "Bulls Eye", we do not find any reason to deny the benefits of the Notification

> No. 12/2003-ST.”
>
> **7.** In this case also, we find that the study material has been sold by Chate Publications Pvt. Ltd. to the appellant and relying on the decision of *Pinnacle* (supra), we hold that the appellant is entitled for the benefit of Notification No. 12/2003-S.T., dated 20-6-2003. Accordingly, we do not find any merit in the impugned order and the same is set aside. The appeal is allowed. The cross objections are disposed of in the above terms.”

9.4 Following the ratio laid down in the Tribunal decisions supra, we hold that the demands made in the respective SCNs on value of course material as listed in para 5.2 supra cannot sustain and will require to be set aside, which we hereby do. So ordered.

9.5 Coming to penalties imposed, as the major amount of demand involved has already been set aside and since in respect of the balance amount conceded by the appellant, the predominant portion was already paid up by the appellant on being pointed out, we also set aside all the penalties imposed in the impugned order. So ordered.

Appeal allowed on above terms.

(operative part of the order pronounced in court)

(P. Dinesha)
Member (Judicial)

(Madhu Mohan Damodhar)
Member (Technical)

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