

**IN THE CUSTOMS, EXCISE AND SERVICE TAX
APPELLATE TRIBUNAL
SOUTH ZONAL BENCH AT CHENNAI
[COURT :Division Bench B1]**

Application No.: ST/Misc[CT]/41629/2017

Appeal No.: ST/00149/2011

[Arising out of Order-in-Appeal No. 231/2010 (MST)
dated 16.12.2010 passed by the Commissioner of Central
Excise (Appeals), Chennai]

M/s.Pentasoftware Technologies Ltd., : **Appellant**
"Taurus", 255, First Main Road,
United India Colony,
Chennai – 600 024

Versus

The Commissioner of G.S.T. & Central Excise, : **Respondent**
Chennai South Commissionerate
(Formerly 'Commissioner of Service Tax, Chennai')

Appearance:-

Shri. M. Kannan, Advocate
for the Appellant
Ms. T. Usha Devi, DC (AR)
for the Respondent

CORAM:

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

Date of Hearing:07.12.2018

Final Order No. **43095 / 2018**

Per Madhu Mohan Damodhar :

The facts of the case are that the appellants were engaged in providing computer training services and were registered under Commercial Coaching or Training Service.

2. Pursuant to Audit, it appeared to the Department that the appellants had not properly discharged their tax liability in respect of the following :

- (i) While providing computer software training to students, appellants had supplied course materials and had realized income thereof. Services provided by computer training institutes along with vocational and recreational training institutes were exempted from service tax from 01.07.2003 to 30.06.2004 vide Notification No. 09/2003-ST dated 20.06.2003. However, for the period from 01.07.2004 to 09.09.2004, there was no such exemption. The exemption was granted to vocational and recreational training institutes vide Notification No. 24/2004 dated 10.09.2004 whereas appellants had been paying service tax in respect of Commercial Training or Coaching Service only from 16.06.2005. Accordingly, it appeared that they had not discharged tax liability of Rs. 8,15,534/- for the period from 01.07.2004 to 15.06.2005.
- (ii) As the course materials supplied to the students were not standard textbooks which alone are exempted as per CBEC Circular No. 59/8/2003-ST dated 20.06.2003, the value of the said course materials is required to be included in the taxable

value for the purpose of payment of service tax. The tax liability on this score worked out to Rs. 45, 919/-.

- (iii) Appellants had provided services to nine franchisees under Franchisee Service with effect from 01.07.2003. The appellants have received royalty, business partner fee and training fee during the period from 01.07.2003 to 31.03.2007 on which a service tax liability of Rs. 1,23,927/- appears to be liable.
- (iv) Appellants had rented out their ground floor annexure for which activity they had received rent amounts from June 2007 to December 2007, however had not discharged service tax liability amounting to Rs. 1,57,598/- under Renting of Immovable Property Service.

3. Accordingly, a Show Cause Notice No. 156/2008 dated 02.06.2008 was issued to the appellants *inter alia* proposing demand of the above amounts with interest and also imposition of penalty under various provisions of law. The Original Authority, vide Order-in-Original dated 29.01.2009, confirmed these proposals for demand of tax with interest and also imposed penalty under Section 78 of the Finance Act, 1994. In appeal, vide the impugned Order No. 231/2010 dated 16.12. 2010, the Commissioner (Appeals) confirmed

the above tax demands and upheld the Order of the Original Authority to that extent. Hence, this appeal.

4. Today when the matter came up for hearing, Ld. Advocate Shri. M. Kannan appearing for the appellant makes oral and written submissions which can be broadly summarized as under :

(i) **In respect of the demand of Rs. 8,15,534/- under Commercial Coaching or Training Service for the period from 01.07.2004 to 15.06.2005 :**

- Ld. Advocate submits that the issue of taxability in respect of this activity had been in litigation. In fact, many of the decisions had ruled that there cannot be any service tax liability on such activity till the Hon'ble Supreme Court in the case of *Commissioner of Central Excise Vs. M/s. SunwinTechnosolution P. Ltd.- 2011 (21) S.T.R. 97 (S.C.)* held that service tax is payable on the said activity for the period from 10.09.2004 to 15.06.2005. Ld. Advocate submits that subsequent to this judgement of the Hon'ble Apex Court, the Tribunal in *M/s. Gargi Consultants Pvt. Ltd. Vs. Commissioner of C.Ex., Allahabad - 2013 (32) S.T.R.*

654 (*Tri. – Del.*) had held that during the relevant period, all decisions of the Tribunal had been in favour of the assessee and only subsequently the said ratio had been reversed by the Hon'ble Supreme Court in the case of *M/s. SunwinTechnosolution P. Ltd. (supra)* and on this finding the Tribunal held that invocation of extended period in this case is not justifiable.

- Ld. Advocate however submits that in respect of the demand of Rs. 8,15,534/-, except for the period from 01.07.2004 to 09.09.2004 the rest of the demands would also be similarly hit by limitation. Ld. Advocate draws our attention to Annexure-A to the Order-in-Original wherein the demand in respect of computer training from 01.07.2004 to 09.09.2004 has been separately worked out as Rs. 1,02,200/- which has been calculated on the value of training fee/value of taxable service, i.e., Rs. 12,77,500/-. The remaining amount of Rs. 7,13,334/- indicated in Annexure-A relating to the period from 10.09.2004 to 15.06.2005 will be hit by limitation.

(ii) **In respect of inclusion of value of course materials resulting in demand of Rs. 45,919/-:**

- Ld. Advocate submits that the matter is no longer *res integra* and the same has been put to rest by a number of Tribunal decisions, for example *M/s. Chate Coaching Classes Pvt. Ltd. Vs. Commr. of C.Ex., Aurangabad – 2013 (29) S.T.R. 138 (Tri. – Mum.)* and *M/s. CSC Computer Education (P) Ltd. Vs. C.S.T., Chennai – 2018 (8) T.M.I. 1178 – CESTAT Chennai.*

(iii) **In respect of the demand of Rs. 1,23,927/- with interest in respect of Franchisee Service for the period July 2003 to March 2007 :**

- Ld. Advocate submits that the said demand is conceded by the appellant.

(iv) **In respect of the demand of Rs. 1,57,598/- in respect of Renting of Immovable Property Service on rental income for the period June 2007 to December 2007 :**

- Ld. Advocate submits that the said demand is also conceded by the appellant.

5.1 On the other hand, Ld. AR Ms. T. Usha Devi, appearing for the Revenue, supports the impugned Order. She submits that the

issue of taxability on computer training activity relating to **Commercial Coaching or Training Service** has been conclusively held against the appellants by the Hon'ble Supreme court in *M/s. Sunwin Technologies (supra)*. Hence, the appellants cannot take shelter under the plea of limitation.

5.2 With regard to the demand on **supply of course materials**, Ld. AR contends that the Board had issued Circular No. 59/8/2003-ST dated 20.06.2003, wherein it has been clarified that in case of Commercial Coaching or Training Institutes exclusion will "apply only to the sale value of standard textbooks, which are priced". Ld. AR points out that the course materials supplied by the appellant cannot come under the fold of standard textbooks and hence, there is no infirmity in the demand made in this regard.

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

7.1.1 With regard to the **demand of service tax of Rs. 8,15,534/- under Commercial Coaching or Training Service on computer training**, we note that the period of dispute is from 01.07.2004 to 15.06.2005. The judgement of the Hon'ble Supreme Court in the case of *M/s. Sunwin Technosolution P. Ltd. (supra)* came about only on 13.09.2010. We also find that pursuant to the said Supreme Court

judgement, the Tribunal in the case of *M/s. Gargi Consultants Pvt. Ltd. (supra)* relied upon by the Ld. Advocate had held that the fact of Tribunals having held in favour of the appellant during the impugned period till the said ratio was overturned by the Hon'ble Supreme Court in *M/s. SunwinTechnosolution P. Ltd. (supra)* is a legitimate ground for setting aside the demand for the extended period. The relevant portion of the Order is as under :

“ 6. Having heard the submissions made by both the sides, we find that issue on merits is no longer res integra. The Hon'ble Supreme Court in the case of Sunwin Techno Solutions Pvt. Ltd., referred supra, has held that during the period from 10-9-2004 to 15-6-2005, an assessee providing “computer training” services is required to pay Service Tax inasmuch as the subsequent notification effective from 16-6-2005 was only a clarificatory notification and was effective retrospectively.

7. However, we find that the demand in the present case stand raised for the period July, 2004 to March, 2005 by way of issuance of show cause notice on 22-9-2010. During the relevant period all the decisions of the Tribunal were in favour of the assessee, laying down that a “computer training institute” is covered by the expression “vocational training institute” and as such, was exempted from Service Tax. As such when the Tribunal, an expert appellant body, has interpreted the law in favour of the assessee, no fault can be found on the part of the assessee to interpret the law in the same manner and not to pay Service Tax on the “computer training services”. It is only subsequently that the law declared by the Tribunal was reversed by the Hon'ble Supreme Court in the case of Sunwin Techno Solutions Pvt. Ltd. As such we are of the view that there was a bona fide belief on the part of the assessee not to pay Service Tax on the “computer training services” provided by them. There is no evidence indicating any mala fide suppression or misstatement with an intent to evade duty on the part the appellant. Inasmuch as the demand stands raised against the appellant by invoking the longer period of limitation, we are of the view that the same is not justifiable. As such we set aside the impugned order and allow the appeal on the point of time-bar, with consequential relief to the appellant.”

7.1.2 We find that the ratio laid down in *M/s. Gargi (supra)* will apply on all fours to the present appeal on hand. This being so, demand of Rs. 7,13,334/- with interest for the period from 10.09.2004 to 15.06.2005 is set aside on the ground of limitation. However, the demand for the previous period namely from 01.07.2004 to 09.09.2004 amounting to Rs. 1,02,200/- with interest thereon which has already been conceded by the Ld. Advocate, is upheld. The appellants will be required to pay up the said amount with interest, as applicable, till the date of payment.

7.2 With regard to the **inclusion of value of course materials for the purpose of arriving at value of taxable service**, we find that the Ld. Advocate is correct in his assertion that the matter has been settled in favour of the appellants in the decision of the Tribunal in *M/s. Chate Coaching Classes Pvt. Ltd. (supra)*. We find that CESTAT, Chennai has also relied on the same ratio in *M/s. CSC Computer Education (P) Ltd(supra)* which has also been relied upon by the Ld. Advocate. For these reasons, we have no hesitation in holding that the demand of Rs. 45,919/- for supply of study materials for the period 2004-05 and 2005-06 cannot sustain and will have to be set aside, which we hereby do. The appeal on this score is therefore allowed.

7.3 We find that the demands of service tax under Franchisee Service amounting to Rs. 1,23,927/- and Renting of Immovable Property Service amounting to Rs. 1,57,598/- with interest have already been conceded by the Ld. Advocate and are therefore upheld. The appellants will be required to pay up these liabilities also with interest thereon.

8.1 As the demand of Rs. 7,13,334/- for the period 10.09.2004 to 15.06.2005 under Commercial Coaching or Training Service and Rs. 45,919/- in respect of tax liability on value of course materials have been set aside, the penalties under Section 78 *ibid.* also have to be limited to and re-worked as under :

- (i) Up to equal penalty under Section 78 *ibid* with respect to demand under Commercial Coaching or Training Service (for the period 01.07.2004 to 09.09.2004): Rs. 1,02,200/-, upheld;
- (ii) Equal penalty under Section 78 *ibid* with respect to demand of service tax under Franchisee Service: Rs. 1,23,927/-, upheld;
and
- (iii) Equal penalty under Section 78 *ibid*, in respect of the demand under Renting of Immovable Property Service :Rs. 1,57,598/-, upheld.

8.2 The total penalty imposed under Section 78 *ibid.*, is therefore required to be reduced/modified to Rs. 3,83,725/- (Rs. 1,02,200/- + Rs. 1,23,927/- + Rs. 1,57,598/-). So ordered. The appellant will also be entitled to the benefit of reduced penalty under Section 78 *ibid.*, provided they fulfil the conditionalities of that Section, including paying up of the liabilities upheld in this Order along with interest thereon, as applicable till the date of payment.

9. The Miscellaneous Application filed by the Department for change in cause title is allowed. The appeal is partly allowed on above terms.

(Dictated and pronounced in open court)

(P Dinesha)
Member (Judicial)

(Madhu Mohan Damodhar)
Member (Technical)

Sdd