

Appeal No. ST/435/2011

Smt. Mallika Jeyabalan, Proprietrix
M/s. Agilam Institute of Foreign Trade Appellant

Commissioner of GST & Central Excise
Madurai

Respondent

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

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

Date of Hearing / Decision: **18.02.2019**Final Order No. **40333 / 2019**

The appellants have conducted professional training to individuals in the field of foreign trade for a consideration at Madurai, Coimbatore and Chennai. Department was of the view that the appellant's institute is not a vocational institute as the participants do not immediately qualify for employment or for self-employment. Accordingly, proceedings were initiated

against the appellant by way of issue of show cause notice dated 20.10.2009 inter alia proposing service tax liability of Rs.2,93,315/- under Commercial Training or Coaching Service for the period from 1.4.2004 to 31.3.2009. Vide adjudication order dated 1.2.2010, the lower authority confirmed the demand of Rs.2,93,315/- along with interest thereon for the period 1.4.2004 to 31.3.2009 as also imposed penalty under various provisions of law. In appeal, Commissioner (Appeals) upheld the same vide impugned order dated 24.4.2011. Hence this appeal.

2. Today, when the matter came up for hearing, Id. counsel Shri M. Kannann made oral and written submissions which are broadly summarized as under:-

2.1 The appellant has rendered professional training relating to various procedures and statutory compliances to be made in relation to export / import of goods in the field of foreign trade. The training course is designed in such a way that all procedures, statutory requirements, foreign trade policy of the Government, prospective industries and area of export / import etc. are made familiar to the participants.

2.2 In this background, they squarely fall within the definition of vocation training institute in the Explanation (i) of Notification 9/2003-ST dated 20.6.2003 and 24/2004-ST dated

10.9.2004 to qualify for exemption from taxability under Commercial Training or Coaching Service.

2.3 The Id. counsel however fairly conceded that for the period 1.7.2004 to 9.9.2004, the appellants are liable to discharge tax liability on the amount collected since the said notifications were not in force during that period but however he prayed that cum-duty benefit may be granted in respect of this period.

2.4 He submitted that the matter is no longer res integra and has been settled by number of decisions of the Tribunal as well as High Courts. He relied on the following case laws:-

- a. 2014 (34) STR 161 (Del.) Commissioner of Service Tax Vs.. Ashu Exports Ltd.
- b. 2019 (20) GSTL 84 (Tri. Chennai) – M. Rajan Vs. Commissioner of Service Tax, Chennai
- c. 2012 (25) STR 359 (Tri. Del.) – Ashu Export Promoters Vs. Commissioner of Central Excise, Delhi
- d. 2007 (8) STR 475 (Tri. Bang.) – Wigan & Leigh Collage India Ltd. Vs. CST, Hyderabad.

3. On the other hand, Id. AR Ms. T. Usha Devi supported the findings in the impugned order.

4. Heard both sides.

5. We find that the Id. counsel is correct in his assertion that the ratio of the afore stated decisions would cover when Notification No. 9/2003-ST dated 20.6.2003 and 24/2004-ST dated 10.9.2004 were in force. This being so, there cannot be

any tax liability for the predominant period of dispute, except for the period between 1.7.2004 and 9.9.2004 under Commercial Training and Coaching service. However, for the period from 1.7.2004 to 9.9.2004, we are of the considered opinion that the matter requires to be remanded back to the adjudicating authority to calculate the tax liability for that period. In such denovo consideration, the original authority shall extend cum-tax benefit if otherwise prescribed by law. Considering that the issue per se was mired in litigation during the entire period, we are of the view that the penalty will not be imposable even for the tax liability that may be reworked out for the period from 1.7.2004 to 9.9.2004. So ordered. The impugned order is set aside and the appeal is partly allowed and partly remanded for the limited purpose as stated above.

(Dictated and pronounced in open court)

(Madhu Mohan Damodhar)
Member (Technical)

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

Rex