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

**ST/00049/2008**

[Arising out of Order-in-Original No.136/2007, dated 19.12.2007 passed by the Commissioner of Service Tax, Chennai]

M/s. APOLLO COMPUTER EDUCATION LTD. APPELLANT

Versus

COMMISSIONER OF CENTRAL EXCISE & SERVICE TAX, CHENNAI RESPONDENT

Appearance:

| | | |
|---|---|---|
| For the Appellant | Shri J. Shankar Raman, Adv. | Adv. |
| For the Respondent | Shri S. Govindaraj, AC (AR) | AC (AR) |

**CORAM:**

**Hon'ble Shri D.N. Panda, Judicial Member**
**Hon'be Shri Madhu Mohan Damodhar, Technical Member**

Date of hearing/decision **30-01-2017**

FINAL ORDER NO. 40491/2017

**Per D.N. Panda:**

Learned counsel for the appellant says that the activity carried out by it was rendering of technical education on the computer subject. He provided services to the Government of India through the nodal agency M/s. Small Industries Services Institute, Chennai (M/s. SISI, in short), who were the beneficiary of the fees received from the trainees, through the appellant. Appellant has not received any consideration from the trainees directly. However, to provide the services, M/s. SISI pays it to the extent of 73% of the amount received by it from the trainees. Such receipt was sought to be taxed by Revenue holding taxable service of Commercial Coaching and Training Service provided.

1.2 It is also submitted that out of the total amount payable to M/s. SISI by the trainees, 73% thereof was sought to be taxed under the category of Business Auxiliary Service again while that extent was also sought to be taxed under the entry Commercial Coaching and Training. The same receipt cannot be doubly taxed under two different taxing entries.

1.3 The third contention is that there was franchise arrangement between the appellant and the franchisees. According to such agreement, 30% of realisation from coaching was payable to the appellant by the franchisees. This portion has been sought to be taxed under the category of Commercial Coaching and Training.

1.4 The last count of demand is on account of Franchisee Services provided. Appellant has no grievance on this count and the demand thereon was Rs.1,68,839/-.

1.5 Appellant submits that services are required to be classified appropriately under one category of taxable services, if any, provided and there cannot be multiplicity of taxation in respect of same receipt. If at all, the appellant shall be brought under the category of Commercial Coaching and Training Service provider, it is entitled to the benefit of Notification No.10/2003-ST, dated 30.06.2003. This is applicable in so far as the contract made with M/s. SISI is concerned, where the trainees are the beneficiary of M/s. SISI and the appellant was trainer.

2. Appellant further submitted that the impugned order was passed without granting opportunity of hearing to the appellant to explain proper nature and character of the receipt. There was overlapping in demand due to multiplicity of taxation of same receipt stated above. The appellant being deprived of course of natural justice there was miscarriage of Justice and arbitrary demand was raised. Notification benefit is also undeniable to the appellant. So also, there was no consideration of the availability of benefit of Notification No.14/2004-ST, dated 10.09.2004 to the appellant.

3. On the above premise, it is prayer of the appellant that if the matter goes back to the Authority below with specific direction to ascertain the nature and character of receipt and thereafter examine taxability thereof, grant of benefit of exemption under appropriate notification can be adjudged. Such exercise only shall serve useful purpose of law and reduce the dispute.

4. Revenue on the other hand says that there is no multiple taxation made. Learned authority below has passed appropriate order.

5. Heard both sides and perused the records.

6. When para 16 of the show-cause notice is read, that shows the allegation made and the manner how Revenue proposed to levy the tax. Particularly para 16(g) to para 16(j) shows that the authority very carelessly proposed taxation of receipts of the appellant during concerned period. Thereby arbitrary adjudication was made to tax the receipts whimsically without understanding law. Therefore, *prima facie*, the contention of the appellant has force. For convenience of reading, para 16 of the show-cause notice is reproduced below to appreciation arbitrary action of authority:

Customs, Excise & Service Tax Appellate Tribunal

"16. *From the foregoing it appears that,*

(a) *Apollo had provided Computer Training courses in Software and hardware in their own name as well as in the name & on behalf of M/s. SISI/ Chennai;*

(b) *M/s. Apollo had also appointed number of Franchisees to provide Computer Software and hardware courses in the name of and on behalf of M/s. SISI /Chennai as well as of M/s.Apollo/Chennai;*

(c) *Apollo and their units as well as their appointed Franchisees have collected fees/charges from the students by using the printed bill books of M/s. SISI / Chennai and entire amounts so collected were consolidated by M/s. Apollo and the same was deposited in the accounts of M/s. SISI;*

(d) *Apollo Chennai had received monetary consideration @ 73% from SISI/Chennai for having provided the said Computer Courses in software and hardware to the students in the name of & on behalf of SISI / Chennai by the units of Apollo as well as by the appointed Franchisees of Apollo;*

(e) *Apollo and their units as well as their appointed Franchisees have collected fees/charges from the students by using the printed bill books of Apollo. The entire amounts so collected were accounted and deposited in the accounts of Apollo;*

(f) *M/s. Apollo / Chennai consolidated entire amount collected and received from them, by using the bill book of SISI as well as that of Apollo and 70% to 85% of the said amount, were paid to the respective Franchisee by Apollo for providing the said computer courses in the name and on behalf of SISI and Apollo;*

(g) *The computer courses in software or hardware provided in the name of M/s.Apollo by units of Apollo and their appointed franchises are classifiable under the category of* ***Commercial Training or Coaching Service.****M/s. Apollo / Chennai are liable to discharge service tax on the entire amount received from their units as well as from their Franchisees since the same being the taxable Value for the Commercial Training Coaching Services provided by M/s. Apollo, from* ***01.07.2004****as explained supra. The tax liability payable for Commercial Training or Coaching Service for the period from 01.07.2004 to 31.03.2007, works out to Rs.93,79,362/- (Service tax Rs.91,96,497/- and Education Cess Rs.1,82,865/-) on the total taxable Value worked out to Rs.7,89,52,658/-, as detailed in the* ***ANNEXURE C1 and ANNEXURE C2*** *put together.*

(h) *Apollo had appointed/authorised number of Franchisees to cater to the needs of SISI/ Chennai as well as M/s.Apollo to provide the said Computer courses in the name of SISI and M/s.Apollo. The same are classifiable under the category of* ***"Franchise Service".*** *M/s. Apollo received non-refundable lump-sum amount from their Franchisees. M/s. Apollo / Chennai are liable to discharge service tax on the total lump-sum gross amount received from their Franchisees, being the taxable Value for the Franchise service provided by M/s. Apollo,* ***from 01.07.2003****as explained supra. The tax liability payable for Franchise Service for the period from 01.07.2003 to 31.03.2007, works out to* ***Rs.1,68,839/-****(Service tax Rs.1,66,627/- and Education Cess Rs.2,212/-) on the total taxable Value worked out to Rs.17,17,161/- as detailed in the* ***ANNEXURE – F1.***

(i) *The services rendered in the name & on behalf of SISI by M/s. Apollo, its branches as well as by their appointed franchisees, for which M/s. Apollo received 73% out of total amount deposited in the accounts of SISI, is Classifiable under the category of* ***"Business Auxiliary Services"****and M/s. Apollo / Chennai are liable to discharge serviced tax on the total amount received from SISI/Chennai being the taxable Value for the Business Auxiliary Service provided by M/s. Apollo,* ***from 10.09.2004*** *as explained* *supra. The tax liability payable for Business Auxiliary Service for the period from 10.09.2004 to 31.03.2007, works out to* ***Rs.57,51,224/-*** *(Service tax Rs.56,38,455/- and Education Cess Rs.1,12,769/-) on the total taxable Value worked out to Rs.5,58,23,108/-, as detailed in the* ***ANNEXURE – B1****.*

(j) *Apollo have not Registered with the Service Tax Department for the taxable services rendered by them and contravened the* ***Section 69****of the Finance Act, 1994 read with* ***Rule 4****of the Service Tax Rules, 1994. However after initiating investigation, they have registered with the Service Tax Department for the taxable Services of "Commercial Training & Coaching"* ***(CTC)****and "Franchise Services"* ***(FRA)****only, under Centralised Registration Certificate No.****AADCA8029RST001*** *dated 08.01.2007. They have not got necessary endorsement in the Registration Certificate for the "Business Auxiliary Service"****(BAS)****.*

(k) *It, therefore appears that Apollo have suppressed the facts and contravened* ***Sections 68, 69 and 70****of the Finance Act, 1994 with willful intention to evade payment of Service Tax and Education Cess, thereby rendered themselves liable for invoking the extended period of the time limit provided under proviso to* ***Section 73 (1)****of the Finance Act, 1994 for demand of Service Tax and Education Cess. It also appears that for non-payment of Service Tax and Education Cess on the due dates apart from the payment of interest on the Service Tax and Education Cess demanded under* ***Section 75****of the Finance Act, 1994, they are liable for penalty under* ***Section 76****of the Finance Act 1994. It further appears that for the contravention mentioned supra, Apollo are also liable for penalty under* ***Section 78*** *of the Finance Act, 1994".*

8. It is necessity of the law that there should not be arbitrary taxation. The subject of the State can only be taxed under express provision of law without any intendment. Therefore, appellant is entitled to a fair opportunity of hearing for determination of the nature and character of receipt of the concerned period and to determine taxability thereof. Only after such an exercise is made, taxability of services, if any can be adjudged and arbitrary taxation can be avoided. Appellant should get opportunity to argue on the benefit of Notification No.10/2003-ST, dated 20.06.2003 and No.14/2004-ST, dated 10.09.2004.

9. Appellant is entitled to course of natural justice at every stage of determination of the levy if any, in the readjudication proceeding and there should not be double taxation and is entitled to

plead both on facts and law and lead evidence if any, against every count of allegation made in the SCN.

10. With the above direction, the appeal is remanded to the adjudicating authority to reach to a judicious consideration of taxability of services provided.

11. Appellant lastly prays that since the very taxability of different services at the initial stage of introduction of law being in doubt, levy of penalty would cause extreme hardship for which there may not be levy of penalty on the appellant. Taking into consideration the contention of the appellant as well as the confusion in implementation of law at the infancy stage and the issues were debatable in various forums, there shall not be penalty on the appellant.

12. Appeal is thus remanded on the above terms.

(Dictated and pronounced in open court)

16/03/17 15/3/2017

(MADHU MOHAN DAMODHAR)
TECHNICAL MEMBER

(D.N. PANDA)
JUDICIAL MEMBER

**ksr**

Customs, Excise & Service Tax Appellate Tribunal

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सहायक पंजीकार / Asst. Registrar
सीमाशुल्क उत्पादशुल्क एवं सेवा कर
अपील अधिकरण / (CESTAT)
चेन्नै / Chennai