FAX : 011-26108426 REGISTERED / AD

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, WEST BLOCK NO.2, R.K.PURAM, NEW DELHI-110066
CUSTOMS APPEAL BRANCH

Dated: **24/06/2015**

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. **ST/A/51959-51961/2015-CU[DB]** dated **12/06/2015**

I am directed to transmit herewith a certified copy of order passed by the Tribunal under section **01(5) of the Finance Act, 1994 relating to Service Tax Act, 1994.**

24-6-15

Asstt. Registrar(CUSTOMS Appeal Branch)

	Application	Appeal	Name and Address of Appellant
1	ST/CROSS/96/2009	ST/182/2009	C.C.E Bhopal Hoshangabad Road, 48, Administrative Area, Area Hills, Bhopal (M.P.) 462011
2	ST/Stay/1278/2009	ST/389/2009	**THE CLIQUE (PERSONALITY DEVELOPMENT INSTITUTE)** 131/10, GOLDEN TOWER, ZONE-II, M.P.NAGAR, BHOPAL.
3	ST/Stay/59338/2013	ST/58699/2013	**The Clique Personality Developement Institute** 131/10, Golden Tower, Zone-ii M.p.nagar BHOPAL MADHYAPRADESH

	Name and Address of Respondent
4	CLIQUE, (PERSONALITY DEVELOPMENT INSTUTUTE) 131/10, GOLDEN TOWER, ZONE-II, M.P.NAGAR, BHOPAL (M.P.),,

(P.T.O)

5 -C.C.E Bhopal
Hoshangabad Road, 48,
Administrative Area, Area Hills,
Bhopal (M.P.) 462011

6 C.C.E. & S.T.-Bhopal
48...ADMINISTRATIVE
AREA,ARERA
HILL...HOSHANGABAD
ROAD,
BHOPAL,
MADHYA PRADESH-462011

Other Appellants and Respondents as per Annexure

Copy To

7 Advocate(s) / Consultant(s):

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12-21,UGF, ANTARIKSH
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NEW DELHI,
DELHI
110001

8 Additional Party's Name & Address :
9 Bar Association, CESTAT, Delhi
10 Director Publications, Customs, Excise. I.P. Estate, Delhi
11 M/s Centax Publications Pvt. Ltd., 1512-B, Bhishm Pitamah Marg, New Delhi-3
12 Company Law Institute of India Pvt. Ltd., No.2 (old no.36), Vaithyaram Street, T. Nagar, Chennai-17
13 Taxmann Allied Service Pvt. Ltd., 59/32, New Rohtak Road, New Delhi-110005
14 Easy Service Tax Online Dot Com Pvt. Ltd., 407A, Iscon Mall, Satellite Road, Ahmedabad-15

15 LAWCRUX Advisors Pvt. Ltd., LAW House, 1-8, Sector-10, Faridabad 121003 (Haryana)

16 TaxIndiaOnline.com Pvt. Ltd., 2nd Floor, Vasant Arcade, Vasant Kunj, New Delhi - 110070

17 Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Hyderabad – 38

18 C.D.R. **19** Office Copy **20** Guard File

Asstt. Registrar(CUSTOMS Appeal Branch)

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI
PRINCIPAL BENCH, COURT NO. II

Service Tax Appeal No. 182 of 2009

[Arising out of Order-In-Appeal No. 140/BPL/2009 dated 17.02.2009 passed by Commissioner of Customs & Central Excise (Appeals) Bhopal]

Commissioner of Customs **Appellants**
Central Excise, Bhopal

Vs.

M/s. The Clique (Personality **Respondent**
Development Institute)

Service Tax Appeal No. 389 of 2009

[Arising out of Order-In-Appeal No. 140/BPL/2009 dated 17.02.2009 passed by Commissioner of Customs & Central Excise (Appeals) Bhopal]

M/s. The Clique (Personality **Appellants**
Development Institute)

Vs.

Commissioner of Customs **Respondent**
Central Excise, Bhopal

Service Tax Appeal No. 58699 of 2013

[Arising out of Order-In-Appeal No. 208/BPL/2012 dated 17.10.2012 passed by Commissioner of Customs & Central Excise (Appeals) Bhopal]

M/s. The Clique (Personality **Appellants**
Development Institute)

Vs.

Commissioner of Customs **Respondent**
Central Excise Bhopal

For approval and signature:

Hon'ble Mr Ashok Jindal, Member (Judicial)
Hon'ble Mr. R K Singh, Member (Technical)

1	Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	
2	Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	
3	Whether Their Lordships wish to see the fair copy of the Order?	
4	Whether Order is to be circulated to the Departmental authorities?	

Appearance:

Shri B B Sharma, AR for the Appellants
Shri Rupendra Singh and Shri Abhishek Baghel, Advocates for the Respondent

CORAM:

Hon'ble Shri Ashok Jindal, Member (Judicial)
Hon'ble Mr. R K Singh, Member (Technical)

Date of Hearing /decision: 12.6.2015

FINAL ORDER NO. A/ 51958-51961 /2015-

Per Ashok Jindal :

Assessee as well as Revenue are in appeals against the impugned order which is for the period July 2003 to March, 2007 and the assessee is also in appeal against the order of Commissioner (Appeals) for subsequent period i.e. October,2007 to March, 2010.

2. As issue involved in all the appeals is common, therefore, all are taken up and disposed of by a common order.

3. The facts of the case are that the assessee is providing pre-licensing training and coaching to the prospective insurance agents sponsored by Insurance companies and also for personality development and human resources during the impugned year.

4. As the assessee was under the impression that they are not required to pay service tax as they were covered under the heading of vocational training but on the other hand, when the clarification received from the department, the assessee paid the service tax on personality development training and educational training. That part of the proceeding is not disputed before us.

4.1 Apart from this the assessee is providing training to candidates who intent to become insurance agents. There candidates are getting training from the assessee instead of insurance companies who sponsor them and pays to the assessee for providing training to the candidates. To become insurance agent, it is mandatory in law for the candidate to undergo a training program which is coaching imparted by the assessee and thereafter to clear the examination conducted by Insurance Regulatory and Development Authority (IRDA). IRDA has been established under section 3 of the Insurance Regulatory and

Development Authority Act, 1999. IRDA has been conferred powers under section 42 of the Insurance Act, 1938 to prescribe Rules for Licensing of Insurance Agents. IRDA is further empowered to prescribe requisite qualifications, training and examination by the Insurance agent under Section 114 A of the Insurance Act, 1938. As per IRDA (License of Insurance Agent) Regulation, 2000 approves and notifies certain Institutions as approved institutions within the meaning of Regulation 2(b) of said Regulation. The assessee is an approved institution as per IRDA Regulation. To obtain a license, Regulation 3(1) prescribed that the candidate is to apply by making an application, Regulation 3(ii) prescribed that the candidate should possess the practical training as specified under Regulation 5, a license can be issued. Regulation 5 provides that a training is mandatory which is to obtain by the candidate from approved institutions as prescribed under the said rules. Thereafter under Rule 6, the candidate has to pass an examination conducted by Insurance Institute of India, Mumbai or some other body which issues a certificate to practice as an Insurance Agent. In these set of facts, the assessee is imparting practical training to the candidates who desirous to become Insurance Agent and issues a certificate for completion of training and on the basis of that certificate the candidate is entitled to appear in the examination conducted as per Regulation 6 of the said Regulation, thereafter who passes the exam becomes the Insurance Agent. The assessee did not pay service tax on their activity on the premise that they are not liable to service tax on their activity. But investigation conducted by the Revenue, it was revealed that the assessee is covered under "Commercial Training and Coaching Institute" as defined under Section 65(27) of the Finance Act, 1994. Therefore, they are liable to pay service tax. In these set of facts, the proceedings were initiated against the assessee and for the period 1st July 2003 to 9th September 2004, a Show Cause Notice dated 1.7.2008 was issued to the assessee for demand of service tax along with interest and proposal for various penalties under Section 76, 77 & 78 were also made. Adjudication took place, the proposals made in the Show Cause Notice were confirmed by converting into the demand of service tax along with interest and imposing various penalties on the appellant under the Finance Act. Aggrieved for the said order, the assessee is before us.

5. Thereafter, two more show cause notices were issued to the appellant for the period July, 2003 to March, 2007 and October, 2007 to March, 2010 for demand of Service tax along with interest and proposal of various penalties under section 76, 77 and 78 of the Finance Act, 1994. Adjudication took place and a demand of Rs. 28,50,136/- were confirmed along with interest and penalties under section 76,77 and 78 of the Finance Act were confirmed. On appeal before the learned Commissioner (Appeals), he confirmed the demand of Rs. 28,50,136/- and Rs.11,14,663/- against the assessee along with interest. But penalties for the period July,2003 to March, 2007 under section 76

were dropped. For the period subsequent to that, penalty was confirmed for the normal period of limitation under section 78 ibid.

6. The assessee is in appeal against the impugned orders demanding service tax under the category of commercial training and coaching services, along with interest and imposition of penalty under section 76 for the earlier period and penalty for the normal period and Revenue is in appeal against dropping of penalty by the learned Commissioner (Appeals).

7. Heard the parties. Considered the submissions.

8. The said issue came up before this Tribunal in the case of ***NIS Sparta Ltd. vs. CST, New Delhi*** wherein vide Final Order No. ST/A/54909/2014 CU(DB) dated 18/12/2014, this Tribunal has held that the assessee is not required to pay service tax under the category of commercial coaching and training service wherein this Tribunal has observed as under:-

> *"14. We further find that a similar issue came before the Hon'ble High Court of Delhi in the case of Indian Institute of Aircraft Engineering (supra) wherein the facts were like as under:*
>
> *"3. It is inter alia the case of the petitioner :*
>
> *(ii) that the petitioner issues a certificate approved by the DGCA to candidates who successfully complete the approved training curriculum and successfully pass the examinations as per the approved course syllabus;*
>
> *(iii) that the DGCA fully controls such training institutes by prescribing syllabus, number of seats per session, manner in*

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which the exam is to be conducted as well as the manner in which the certificate is to be issued, though the candidates get the Final Licence i.e. BAMEL from the DGCA after qualifying further examination conducted by the DGCA;

(iv) that though Service Tax in India was introduced in the year 1994 but commercial training or coaching services were brought under the Service Tax net only with effect from 1-7-2003 by insertion of Clause 65(105)(zzc) in the Finance Act by making services provided by a commercial training or coaching centre in relation to commercial training or coaching as a taxable service;

In these set of facts, the Hon'ble High Court has examined the issue and observed as under :

"20. The position which thus emerges is that :-

(A) That successful completion of Aircraft Maintenance Engineers course from an approved training school by itself does not authorize such candidate to certify the airworthiness of an aircraft or its repair or maintenance. For the same, an examination to be conducted by the DGCA is to be passed.

(B) For appearance in the said examination, it is not essential to undergo the course offered by the approved training school and others are also eligible to take the said examination.

21. Nonetheless, the law dealing with the subject of aircrafts has not left the institutes imparting such courses/training and which course completion/training makes the successful candidates eligible to one year exemption, unregulated. It is not as if anyone can start, offering such course and imparting training. The Act, Rules and CAR provide for approval of institutes such as the petitioner's. DGCA regulates the course content offered by such

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institute and gives relaxation to the successful candidates from such institutes in the matter of taking the examination to be conducted by the DGCA for grant of authority/license to render services of aircraft repair and maintenance and to certify the aircraft's airworthiness. Though qua the fee etc. to be charged by such institutes there does not seem to be any restriction but the powers under the Act and the Rules in exercise of which such CAR has been issued are wide enough to also issue a direction with respect to the fee etc. to be charged by such institute.

22. The question which falls for consideration is whether the aforesaid would amount to "recognition by law" of the Course Completion Certificate and On Job Training Certificate given by such institute.

23. The expression "recognized by law" is a very wide one. The legislature has not used the expression "conferred by law" or "conferred by statute". Thus even if the certificate/degree/diploma/qualification is not the product of a statute but has approval of some kind in 'law', would be exempt.

24. 'Recognize' is defined, in the Black's Law Dictionary, 8th Edition as confirmation of an act done by another person as authorized, formally acknowledging the existence; and, in Concise Oxford Dictionary as acknowledging the existence, validity or legality of.

26. There can be no doubt that such recognition through the Rules framed as aforesaid and through issuance of CAR, is a recognition by law, which is defined in Black's Law Dictionary, 8th Edition as the aggregate of legislation, judicial precedents and accepted legal principles and the set of rules or principles dealing with a specific area of legal systems. The Rules and the

CAR aforesaid dealing with aircrafts, there can be no doubt, are law. The Supreme Court in Narsingh Pratap Singh Deo v. State of Orissa - AIR 1964 SC 1793 held that a law generally is a body of rules which have been laid down for determining legal rights and legal obligations which are recognized by Courts. Similarly, in R.S. Nayak v. A.R. Antulay - (1984) 2 SCC 183 it was held that law includes any Ordinance, By-law, Rule, Regulation, Notification, Custom or Usage having force of law. The Rules and CAR aforesaid have been enacted in exercise of legislative power as aforesaid.

27. The reasoning in the impugned Instruction dated 11th May, 2011 that because the qualification awarded by the Institute does not culminate in automatic issuance of license/ by the DGCA to certify the repair, maintenance or airworthiness of an aircraft and for authorization which purpose a further examination to be conducted by the DGCA is to be taken, in our view mixes up and confuses, 'qualification' with "a license to practice on the basis of that qualification". An educational qualification recognized by law will not cease to be recognized by law merely because for practicing in the field to which the qualification relates, a further examination held by a body regulating that field of practice is to be taken. Immediate instance can be given of the qualification in the field of law. Though by amendment of the recent years, the right to practice law on the basis of the said qualification has been made subject to clearing/passing a Bar Exam to be held by the Bar Council of India, the same does not make the qualification of law not recognized by law. The recognition accorded by the Act, Rules and CAR supra to the Course Completion Certificate issued by the Institutes as the petitioner cannot be withered away or ignored merely because the same does not automatically allow the holder of such qualification to certify the repair, maintenance

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or airworthiness of an aircraft and for which authorization a further examination to be conducted by the DGCA has to be passed/cleared.

15. Thereafter, Hon'ble High Court concluded that the training conducted by the appellant in that case having a recognition of law and is not covered under commercial or coaching training centre as defined under Section 65(27) of the Finance Act, 1994. We have further gone through the decision of Pasha Educational Training Inst. (supra) wherein similar set of facts, in the case of the competitor of the appellant this Tribunal held that the appellant was imparting the vocational training and held that the appellant was entitled for benefit of exemption under Notification No. 9/2003-ST dated 20th June 2003. The reliance by the ld. AR in the case of St. Antony's Educational & Charitable Society is also of no help as in the case in hand, we have already observed that the training imparted by the appellant is having recognisation of law.

16. As discussed above, to conclude, we hold that the facts of this case are similar to the facts of the case of Pasha Educational Training Inst. (supra) and Indian Institute of Aircraft Engineering (supra) wherein it was held that the training imparted by the appellants were not covered under the definition of Section 65(27) of the Finance Act, 1994.

17. Therefore, we hold that in this case also the training imparted by the appellants does not fall under the ambit of Section 65(27) of the Finance Act, 1994 as the training imparted by the appellant is having the recognition of law and covered under *exclusion clause of Section 65(27) of the Finance Act, 1994, therefore the appellant is not liable to pay service tax at all."*

9. We find that issue in hand is squarely covered by the decision of this Tribunal in the case of ***NIS Sparta Ltd.*** (supra). Therefore, we set aside the demand of service tax for the period as discussed hereinabove under the category of commercial training and coaching service. Consequently, the interest and penalty is not leviable on the appellants. With these terms, appeals of assessee are allowed. Revenue's appeal is dismissed.

(Dictated and pronounced in the open court)

16.06.15

(Ashok Jindal)
Member(Judicial)

(R K Singh)
Member(Technical)

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