CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH - COURT NO. 1

Service Tax Appeal No. 52452 of 2018

(Arising out of Order-in-Appeal No. 99 (NG) ST/JPR/2018 dated 16.05.2018 passed by Commissioner, (Appeals), Central Goods & Service Tax and Central Excise, Jaipur NCRB, Statute Circle, Jaipur-302005)

M/s Samadhan Systems Pvt. Ltd. **...Appellant**
404, Gaurav Towers, Bardiya complex,
Malviya Nagar, Jaipur-302017

VERSUS

Principal Commissioner of CGST **...Respondent**
& Central Excise, Jaipur

APPEARANCE:

Shri Shagun Arora, Advocate for the Appellant

Shri Harshvardhan, Authorized Representative of the Department

CORAM:

HON'BLE MR. JUSTICE DILIP GUPTA, PRESIDENT
HON'BLE MR. C.J. MATHEW, MEMBER (TECHNICAL)

DATE OF HEARING/DECISION: 12.09.2022

FINAL ORDER NO. 50866/2022

JUSTICE DILIP GUPTA:

M/s Samadhan Systems Pvt. Ltd.[1] has filed this appeal to assail the order dated 16.05.2018 passed by the Commissioner (Appeals), CGST and Central Excise, Jaipur[2] dismissing the appeal filed by the appellant to challenge the order dated 06/19.11.2012 passed by the Additional Commissioner that confirmed the demand proposed in the two show cause notices dated 15.04.2011 and 07.10.2011 for the

---

1. the appellant
2. the Commissioner (Appeals)

period from April 2009 to March 2010, and April 2010 to March 2011 respectively with interest and penalty.

2. The appellant is engaged in providing computer education in Animation and Cinematics. The appellant entered into a Business Partner Agreement with Maya Academy of Advanced Cinematics[3], wherein the appellant received the rights to conduct the courses offered by MAAC in Graphic Animation and Cinematics.

3. The responsibilities of MAAC, as per **clause 3** of the Agreement, are as under:

> a. Provide course material and update the same regularly;
>
> b. Provide suitable training to the personnel approved by it, the cost of which would be reimbursed by the appellant;
>
> c. Conduct regular audits to ensure that the appellant is maintaining the standards of teaching and facilities maintained by MAAC; and
>
> d. On completion of the course by students, certificate of completion of course be granted by MAAC as per its evaluation criteria.

4. The responsibilities of the appellant, as per **clause 4** of the Agreement, are as under:

> a. Maintain the standards laid down by the appellant;
>
> b. Market the course, enrollment process, collect fee from students and related administrative matters; and
>
> c. Provide suitable premises and computers for the course.

---

3. MAAC

5. **Clause 7** of the Agreement categorically provides that the appellant would collect the entire fee from the students and deposit the same in MAAC account on fortnightly basis. Thereafter, MAAC would pay the applicable service tax and remit 80% of the net amount to the appellant. The balance 20% is to be retained by MAAC.

6. It has been stated by the appellant that in the said transaction, the premises from where the appellant operated was included in the Service Tax registration of MAAC and MAAC paid service tax on 100% of the amount collected from the students.

7. However, on 5.3.2010, the appellant received a show cause notice proposing to demand service tax under the category of 'commercial training or coaching' service for the period 2004-05 to 2008-09 basis the allegation that the appellant was engaged in providing the said services to the students. This show cause notice was adjudicated upon and the demand was dropped as the service tax liability on the gross value received from the students was discharged by MAAC. The appeal filed by the department before the Commissioner (Appeals) was, however, allowed. An appeal was, thereafter, preferred by the appellant before the Tribunal in **M/s. Samadhan Systems (P) Ltd.** versus **C.C.E., Jaipur-I**[4]. The Tribunal allowed the appeal holding that the appellant is not liable to pay service tax under the category of 'commercial training or coaching' service, particularly when tax on such service had already been discharged by MAAC.

8. Two subsequent show cause notices dated 15.4.2011 and 7.10.2011 were also issued to the appellant for the years 2009-10 and 2010-11 raising the same allegations as contained in the earlier

---

4. 2018 (2) TMI 1049 – CESTAT New Delhi

show cause notice dated 05.03.2010. It has been proposed in these two show cause notices that the appellant was rendering 'commercial training or coaching' service to the students and was liable to pay service tax on the amount paid by the students. It has also been alleged that MAAC was rendering 'franchise' service to the appellant, which is an independent transaction and, therefore, the service tax paid by MAAC cannot be a reason for the appellant not to pay service tax.

9. These two show cause notices were adjudicated by the Additional Commissioner by order dated 19.11.2012 wherein the demand was confirmed. The appeal filed by the appellant before the Commissioner (Appeals) was dismissed by order dated 16.05.2018.

10. This appeal has been filed to assail the said order dated 16.05.2018.

11. Shri Shagun Arora, learned counsel for the appellant made the following submissions:

(i) The issue has already been decided by the Tribunal in **Samadhan Systems** for the earlier period of dispute holding that the appellant is not liable to pay service tax under the category of 'commercial training or coaching' service, especially when tax on such service had already been discharged by MAAC;

(ii) While dealing with another coaching centre of MAAC, the Tribunal, in **M/s. Pixel Effects** vs. **C.C.E. and ST, Bhopal**[5]**,** relying on the decision of the Tribunal in **Samadhan Systems,** held that no

---

5. 2018 (4) TMI 835-CESTAT New Delhi

service tax was payable under the category of 'commercial training or coaching' service;

(iii) The aforesaid decisions of the Tribunal were brought to the attention of the Commissioner (Appeals), but the impugned order has been passed in complete disregard to the orders of the Tribunal;

(iv) Business Partner Agreement between the appellant and MAAC has led to a revenue sharing arrangement. MAAC and the appellant were jointly rendering services to the students and tax on such services has been discharged by MAAC. Thus, the appellant was not liable to pay service tax. To support this contention, reliance has been placed on the decision of the Tribunal in in **Shri Niraj Prasad** versus **Commissioner of Central Excise & Service Tax, Kanpur**[6]**;** and

(v) The appellant did not receive any consideration from the students.

12. Shri Harshvardhan, learned authorised representative appearing for the department however supported the impugned order and submitted that it does not call for any interference in this appeal.

13. The issue raised in this appeal is regarding the demand of service tax under 'commercial training or coaching' service defined under section 65 (26) of the Finance Act 1994[7] and made taxable under

---

6. 2019 (11) TMI 436- Cestat Allahabad
7. the Finance Act

section 65(105)(zzc) of the Finance Act. The period of dispute involves in the two show cause notices dated 15.04.2011 and 07.10.2011 is from 2009-10 and 2010-11. The allegation made in the show cause notices is that the appellant is rendering 'commercial training or coaching' service to the students and is, therefore, liable to pay service tax on the amount paid by the students. In regard to the service tax paid by MAAC, the show cause notice alleges that MAAC was rendering 'franchise' service to the appellant, which was an independent transaction and, therefore, service tax paid by MAAC would not absolve the appellant from paying service tax.

14. The said issue stands covered in favour of the appellant in the decision of the Tribunal rendered in the case of the appellant itself in **Samadhan Systems**. The decision relates to an earlier period from 2004-05 to 2008-09, while the dispute in the present appeal is from April 2009 to March 2011 and holds that the appellant is not liable to pay service tax under the category of 'commercial training or coaching' service, particularly when tax on such service had been discharged by MAAC. The relevant portion of said decision of the Tribunal in **Samadhan Systems** is reproduced below:

> "2. **The brief facts of the case are that the appellants are engaged in providing computer education in animation and cinematics. They have made an arrangement with Maya Academy of Advanced Cinematics (MAAC).** The agreement provides for various obligations and responsibilities on both the parties for providing such computer education to various participants. Certain important features of the agreement are that MAAC shall provide all the course materials and provide suitable training to the personnel approved by it and cost of the same would be reimbursed by the appellant; conduct regular audit to

ensure the standard of coaching and finally issue a completion certificate to the students after evaluating at the time of completion of the course. The appellants are engaged in physically providing all the infrastructure, coaching staff etc. and do undertake such coaching to the participants. **The consideration received for such coaching was acknowledged by a receipt issued in the name of MAAC and deposited to the account of MAAC. On such full consideration, Service Tax liability under commercial training or coaching service has been paid by MAAC. 80%, net of service tax, on the gross consideration is repatriated back to the appellant.**

3. On the above background, the Revenue entertained a view that the appellants have failed to discharge Service Tax for taxable category of commercial training or coaching service and proceeded against them to demand and recover Service Tax on the full gross amount paid by the students. The original authority after detailed examination of the contractual arrangement and the invoices, certificates, connected to the course, held that the appellants are not liable to Service Tax. He recorded that full Service Tax liability on the gross value received by the students has been discharged by MAAC. There is no question of further confirming any Service Tax against the appellant. The Revenue preferred appeal against the said order.

xxxxxxxxxxxxxxx

9. The admitted facts are that the appellants had Agreement with M/s. MAAC. The said Agreement stipulates various obligations / responsibilities of both the parties. The students who got admitted for the courses pay a consideration, which is credited to M/s. MAAC in full. We have perused the sample invoices. This fact cannot be disputed. The full consideration so received by M/s. MAAC has been subjected to Service Tax under commercial training and coaching service. This has not been disputed. The fact that the premises in which the training is carried out by the appellant is also listed for central registration to discharge Service Tax by MAAC is also not disputed. **In such situation,**

> **it is not clear as to how a Service Tax liability on the appellant can again be fastened on the very same activity. We also note that the appellant do not receive any amount from the service recipient as a consideration. The arrangement is that the gross amount paid by the students is credited to MAAC on which Service Tax has been discharged. It is clear that the appellant acts as an instrument in carrying out the training programme which is designed and managed by the MAAC.** This is evident from the course completion certificate issued by MAAC on completion of the course. We have perused the sample certificate issued in this regard. The appellants name is nowhere figuring in the completion certificate. **All these facts will indicate that MAAC is overall managing and the commercial coaching and training service suffered tax at their hands.**
>
> 10. We also perused the order of Commissioner (Appeals), Aurangabad in a similar set of facts though with reference to another business partner of MAAC. The issue was examined in detail in the said order. It was concluded that no Service Tax liability will arise on the business partner of MAAC under commercial coaching and training service.
>
> **(emphasis supplied)**

15. In view of the aforesaid decision of the Tribunal, the confirmation of demand by the Commissioner (Appeals) cannot be sustained.

16. This apart, a conjoint reading of the Agreement, coupled with the intent of the parties, shows that it was to give effect to an arrangement which is in the nature of co-venture where two parties work for a common purpose, i.e., rendering commercial training/coaching service to the students. Such an agreement has been held to be in the nature of a revenue sharing arrangement by a Division Bench of the Tribunal in **Niraj Prasad,** which decision relied on the decision of the Tribunal in **Samadhan Systems**. The relevant portion of the decision in **Niraj Prasad** is reproduced below:

> "32. We express our inability to accept view taken by the adjudicating authority. Career Launcher has paid Service Tax on the entire amount of fees collected from the students. It is on a revenue sharing basis, that part of this fee is remitted to the Appellant by Career Launcher. The Appellant, therefore, cannot be required to again pay Service Tax on this fee. As noticed above, in fact no service is provided by the Appellant to Career Launcher because in terms of the agreement, the revenue is shared between Career Launcher and the Appellant. xxxxxxxxxxx."

17. For this reason also, service tax could not have been levied upon the appellant.

18. Thus, for all the reasons stated above, the order dated 19.11.2012 passed by the Commissioner (Appeals) cannot be sustained and is set aside. The appeal is, accordingly, allowed.

(JUSTICE DILIP GUPTA)
PRESIDENT

(C.J. MATHEW)
MEMBER (TECHNICAL)

JB