

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
New Delhi

PRINCIPAL BENCH – COURT NO. 3

Service Tax Appeal No. 50878 Of 2015

[Arising out of Order-in-Original No. JAL-EXCUS-001-COM-054-14-15 dated 20.11.2014 passed by the Commissioner of Central Excise, Jaipur]

M/s International Horticulture Innovation : Appellant (s)
and Training Centre

Durgapura Horticulture Farm, Jaipur

Vs

Commissioner of Central Excise, Jaipur : Respondent (s)

NCR Building, Statute Circle, C-Scheme-302005

APPEARANCE:

Shri B. L. Narsimahan, Shri Kunal Agarwal, Advocates for the Appellant
Shri Rakesh Kumar, Authorized Representative for the Respondent

CORAM :

HON'BLE MS BINU TAMTA, MEMBER (JUDICIAL)

HON'BLE MS. HEMAMBIKA R. PRIYA, MEMBER (TECHNICAL)

Date of Hearing: 28.02.2024

Date of Decision: 10/07/2024

FINAL ORDER No. 56011/2024

HEMAMBIKA R. PRIYA

The present appeal has been filed by M/s International Horticulture Innovation and Training Centre, Durgapura Horticulture Farm, Jaipur (hereinafter referred to as the appellant) to assail the Order-in-Original No. JAI-EXCUS-001-COM-054-14-15 dated 20.11.2014 wherein the demand of service tax under Commercial Coaching and Training Centre Service, Works Contract Services, Mandap Keeper Service and Scientific and Technical Consultancy Service was confirmed and penalties under Section 76, 77 and 78 of the Finance Act, 1994 were also imposed.

2. The brief facts of the case are that the appellant was engaged in providing Scientific & Technical Consultancy, Commercial Training & Coaching and Work Contract Service along with other services as a non- profit organization, to work as an international centre of excellence in horticulture. Their objective was to equip the grower trainees with practical skills and innovative technological inputs in order to improve the quantum and quality of marketable produce. An inquiry was initiated against the appellant on the grounds that they were not paying service tax on the services being provided by them. During the inquiry, the statement of Dr. Sangita Ladha, Director of the appellant was recorded on 17th January 2012 wherein she stated that their centre was registered as a Society and was involved in imparting training to various clients, including Horticulture Officers of the State Agriculture & Horticulture Department and other Government Bodies, Scientists, Students, farmers etc., and in research related to horticulture and its related activities. They had obtained Service tax Registration under Commercial Training and Coaching, Scientific and Technical Consultancy and Works Contract Services. However, they were paying service tax on Works Contract Service only, on the amount received towards the orders for execution of greenhouse projects for the Government of Rajasthan. She further stated that they had paid various amounts for different Advanced Horticulture related Trainings undertaken by officers of their Institute to M/s PTC Netherlands for imparting training. On being asked about payment of service tax on the above referred amounts, she stated that the horticulture and agriculture related training activity provided by them, not being any commercial training and coaching services,

does not fall within the ambit of service tax. However, she submitted that service tax had been paid along with interest on account of work contract projects. She further stated that they have not paid any service tax on the payments made to M/s Stitching PTC, Netherlands on account of training imparted to their officers and for preparation of business plan of their centre, because the same was related to horticulture and agriculture & did not fall under the purview of service tax. She also informed M/s DCM Shriram Consolidated Ltd, New Delhi, a private partner met their operational expenses partly by providing a sum of Rs 60 lakh per annum and this arrangement was for a period of 5 years from the date of signing of MOU. Subsequently, Sh. Harivansh Yadav, Director of the appellant in his statement dated 3rd April 2013 stated that their institute was paying service tax on Works Contract Service only till June, 2012 and provided copies of GAR-7 challans depositing service tax of Rs. 4,67,771/- of service tax on turnkey projects under work contract service. However, on other services provided /received by them, he opined that no service tax was payable. Therefore, they have neither collected nor paid any service tax on such services.

2.2 A Show Cause Notice dated 09.10.2013 was issued to the appellants alleging non-payment of service tax on the aforesaid activities by contravening the provisions of Section 66, 67, 68, 69 and 70 of the Finance Act, 1994 read with Rules 4, 5, 6 and 7 of the Service Tax Rules, 1994. It was alleged in the Show Cause Notice that the appellants have not paid service tax on Commercial Training & Coaching Service and Scientific & Technical Consultancy service provided to various clients and also on import of similar services. The same was adjudicated vide the impugned order.

Aggrieved by the said order, the appellant has filed appeal before this Tribunal.

3. The Learned Counsel for the appellant submitted that the impugned order has confirmed the demand of service tax of Rs.42,00,910/- on the total value of Rs. 4,02,05,286/- with respect to the training imparted by the Appellant under the category of "Commercial Training or Coaching Services" and the same has been confirmed without taking into account the correct nature of receipts. From perusal of the receipts, he submitted that it was evident that out of total receipts of Rs.4,02,05,286/-, receipt only to the extent of Rs. 3,67,81,896/- was towards the actual training of various personnel. Hence, the remaining amount is not taxable under the category of 'Commercial Training or Coaching Services'. Further, the learned Counsel submitted that the demand of service tax on Rs. 3,67,81,896/- was not sustainable as the 'Training services' provided by a vocational training institute were exempt till 26.2.2010. He drew attention to Notification No. 24/2004-ST dated 10.9.2004 whereas an exemption was provided to 'Commercial Training or Coaching Services provided by a vocational/recreational training institute. The said notification was further amended by Notification No. 3/2010-ST dated 27.02.2010 vide which the definition of 'vocational training institute' was substituted with effect from 27.2.2010. The amendment by Notification No. 3/2010-ST dated 27.2.2010 did not have any retrospective effect and was prospective in nature. He placed reliance in this regard on the following decisions:-

- (i) **Canan School of Catering & Hotel Management v. CCE & ST, Chennai, [2019 (22) GSTL 61 (Tri. -Chennai)];**

- (ii) **Actor Prepares v. Commissioner of Service Tax, Mumbai, [2014 (33) STR 546 (Tri. - Mumbai)]; and**
- (iii) **CST, Delhi v. Ashu Export Promoters (P) Ltd., [2014 (34) STR 161 (Delhi)]**

3.1 The learned counsel further contended that in the present case, the appellant had imparted trainings to farmers, students, teachers etc. in the field of horticulture, which further helped them in seeking employment as well as towards self-employment. Thus, till 26.2.2010, the appellant was entitled for benefit under Notification No. 24/2004-ST dated 10.9.2004 and with respect to the receipts of Rs. 12,68,940/, which was towards the cost of study materials, no service tax can be levied on account of the exemption provided under Notification No. 12/2003-ST dated 20.6.2003. He further stated that in respect to receipts of Rs.21,54,450/-, no service tax was leviable as the said amount was received towards reimbursements of expenses. In this regard, the learned counsel relied on the following decisions:

- (i) **Intercontinental Consultants and Technocrats P. Ltd. vs. Union of India, 2012- TIOL-966-HC-ST-DEL, affirmed by Hon'ble Supreme Court in [2018 (10) GSTL 401 (SC)];**
- (ii) **Commissioner of S. T., Chennai vs. Sangamitra Service Agency, [2014 (33) STR 137 (Mad.)]; and**
- (iii) **Amit Sales vs. Commissioner of Central Excise, Jaipur-1, [2017 (47) STR. 156 (Tri. - Del.)]**

3.2 As regards the receipt of Rs. 20,00,000/-, learned counsel submitted that the amount pertained to grants-in-aid given by National Mission for Medicinal Plants (NMMP) for development of model nursery for propagation of medicinal plants. Hence, service tax was not leviable and in support of his submission, he relied on the following circular and decisions: -

- (i) **Circular No. 127/9/2010-S.T., dated 16-8-2010**

- (ii) **Apitco Ltd. v. CST, Hyderabad, 2010 (20) STR 475(Tri-Bang) affirmed vide [2011 (23) STR J94 (SC)];**
- (iii) **ILFS Clusters Development Initiative Ltd. vs. Commissioner, Customs, Central Excise & Service Tax, Noida, [2018 (10) TMI 1007-CESTAT ALLAHABAD];**
- (iv) **Centre for Research & Industrial Staff Performance vs. CGST, Bhopal, 2019 (22) GSTL 385 (Tri. - Del.);**
- (v) **Madhya Pradesh Consultancy Organisation Ltd. v. C.C.E., Bhopal, [2017 (4) G.S.T.L. 100 (Tri. - Del.)]**

In view of the above submissions, he contended that the demand of service tax confirmed under the category of 'Commercial Training or Coaching Services' was not sustainable.

3.3 The learned counsel further submitted that the impugned order has confirmed the demand of service tax of Rs. 25,34,202/- with respect to the execution of greenhouse projects and other projects under the category of 'Works Contract Services' after denying the benefit of Composition Scheme availed by the Appellant. The impugned order had denied such benefit on the ground that neither the actual value of goods was provided by the appellant nor an advance intimation about opting for the composition scheme. In this regard, he submitted that the impugned order had accepted that the Appellant has rendered 'Works Contract Service'. To such an extent, there is no dispute. The dispute pertains limitedly in respect of the extension of benefit of the composition scheme without prior intimation to the Department. He contended that the demand cannot be confirmed as (i) tax amount in respect of works contract services had already been paid. Further, a portion of the demand pertains to grants-in-aid, which is not taxable under the said category; (ii) As regards the demand of Rs.15,39,373/-, the Appellant had already paid service tax by availing the benefit of composition scheme in terms of Works

Contract (Composition Scheme for Payment of Service Tax) Rules, 2007. There is no dispute with respect to such payment of service tax by the Department, except that the appellant had not exercised the option to avail the benefit of the composition scheme. Rule 3(3) of Composition Scheme Rules does not prescribe any intimation for such exercising of the option. Non- intimation is merely a procedural irregularity and that substantive benefit cannot be denied. He relied on the following decisions which had followed this position of law:

- (i) **J. R. Constructions vs. CCE, Jaipur, [2019 (7) TMI 1793-CESTAT NEW DELHI];**
- (ii) **G. N. Buildev Pvt. Ltd. vs. CCE, Jaipur, [2019 (2) TMI 1176-CESTAT NEW DELHI];**
- (iii) **Global Build Estate Projects vs. CCE, Jaipur, [2019 (4) TMI 1688-CESTAT NEW DELHI];**
- (iv) **Vaishno Associates v. CCE & ST, JAIPUR-I, [2018-TIOL-1486-CESTAT-DEL];**
- (v) **ABL Infrastructure Pvt. Ltd. v. CCE, Nashik, [2015 (38) STR 1185 (Tri. Mumbai)];**
- (vi) **Skyline Engineering Contract (India) Ltd. v. CST, New Delhi, [2018 (2) TMI 844- CESTAT NEW DELHI];**
- (vii) **Nitson & Amitsu Pvt. Ltd. v. Commissioner of ST, Kolkata-II, [2018 (4) TMI 1322- CESTAT KOLKATA];**
- (viii) **Areva T & D India Ltd. v. CCE & ST, LTU, Chennai, [2018 (6) TMI 663-CESTAT CHENNAI]; and**
- (ix) **Allied Bitumen Complex (India) Pvt. Ltd. v. CCE, Calcutta-III, 2002 (141) ELT 373 (Tri. - Kolkata)**

3.4 The learned counsel further contended that the demand of service tax of Rs. 93,361/- is on the amount received by the Appellant for leasing out space for conducting various educational seminars, under the category of 'Mandap Keeper Services'. For any service to be taxable under 'mandap keeper service', the immovable property is let out for organizing any official, social or business function. In the present case, the property was let out by the

Appellant was for conducting the seminars on horticulture which is for the educational/academic purpose. Thus, the same falls outside the purview of 'mandap keeper services'.

3.5 The learned Counsel further contended that the impugned order has confirmed the demand of service tax of Rs. 21,73,714/- on the foreign remittances made by the Appellant to M/s. Stitching PTC Netherlands for providing training to the trainers/managers sent by the Appellant to Netherlands, under the category of 'Commercial Training or Coaching Services'. He contended that there is a computational error in the taxable value taken i.e. instead of Rs. 2,46,536/-, the value has been taken as Rs.24,65,336/-. Further, the impugned order had demanded service tax under this category in terms of Section 66A of the Finance Act i.e. import of services. In this regard, he drew attention to Taxation of Services (Provided from Outside India and received in India) Rules, 2006 ("Import of Service Rules") which bifurcates all the services into three different categories based on the nature of such service. Rule 3 of Import of Service Rules provides that the services of 'Commercial Training or Coaching Services' are performance-based services i.e. the place of performance of such service is the place of provision of such service. The Learned counsel further submitted that in the present case, the training services have been provided by PTC Netherlands to trainers/managers in Netherlands, i.e. a place outside India. Thus, since the place of performance of such service is outside India, the same is not taxable. He placed reliance on the following decisions wherein it was held that in case of training services provided from

outside India, the place of performance is outside India and thus, is not taxable.

- (i) **Commr. Of C. Ex., ST and Customs vs. Maersk India Pvt. Ltd., [2015 (40) STR 1059 (Bom.)];**
- (ii) **Firmenich Aromatics India Pvt. Ltd. vs. CCE & ST, Daman, [2018 (10) TMI 655- CESTAT AHMEDABAD];**
- (iv) **Motherson Auto Ltd. vs. CC, CE & ST, Noida, [2017 (1) TMI844 CESTAT ALLAHABAD]**

3.6 The learned counsel further submitted that the demand of service tax of Rs.5,38,952/- was with respect to the activity of design of business & master plan undertaken by M/s. Stitching PTC Netherlands for the Appellant under the category of 'Scientific or Technical Consultancy Services'. As per the definition for a service to be covered within the purview of 'Scientific or Technical Consultancy Services', following ingredients needs to be satisfied:

- a) Nature of activity should be 'advice, consultancy, or scientific or technical assistance';
- b) Rendered by a scientist or a technocrat, or any science or technology institution/organization to the other person;
- c) In one or more disciplines of science or technology.

In this context, he submitted that in the present case, the activity of design of business & master plan had been undertaken by M/s. Stitching PTC Netherlands, was neither in the nature of a scientist or a technocrat or a science or technology institution or organization. M/s. Stitching PTC Netherlands is a foreign-based company, having the expertise and know-how with respect to Horticulture. He placed reliance on the following decisions wherein it has been held that the services not been provided by a scientist or a technocrat or a science or technology institution or

organization, is not taxable under the category of 'Scientific or Technical Consultancy Services'.

- a) **Administrative Staff College of India vs. CC & CE, Hyderabad, 2009 (14) STR 341 (Tri.Bang.),** maintained by Supreme Court vide [2010 (20) STR J117 (S.C.)];
- b) **Maruti Suzuki India Limited vs. CCE, Delhi, [2019 (21) GSTL 24 (Tri. - Chan.)];** and
- c) **Jai Research Foundation vs, CCE & ST, Vapi, 2019 (25) GSTL 473 (Tri. - Ahmd.)**

3.7. On the issue of demand of service tax on the operational expenses received from M/s. DCM Shriram Consolidated Limited the Impugned Order has confirmed the demand of service tax of Rs.22,24,800/- on the operational expenses of the Appellant incurred by M/s. DCM Shriram Consolidated Limited under the category of 'Scientific or Technical Consultancy Services', the Id counsel submitted that the entire basis of such demand in both the SCN as well as Impugned Order is the selective reliance on one of the clauses of the Memorandum of Understanding (MoU) entered between the Appellant and M/s. DCM Shriram Consolidated Limited. He submitted that from the MoU itself, it is evident that M/s. DCM Shriram Consolidated Limited would be bearing the staff and operational expenses of the Appellant, being the third founding member of the Appellant. He stated that no service tax can be levied without identifying as to how a particular activity would fall under a particular category of service. In the present case, the impugned order had confirmed the demand on operational expenses without identifying the activity undertaken in lieu of such amount and how the same would be classifiable under the category of Scientific or Technical Consultancy Services'. As the expenses

have been incurred by M/s, DCM Shriram Consolidated Ltd. being one of the founding members, it cannot be said to be towards any service. As regards, the demand for extended period, he contended that the department had failed to establish suppression/mis-declaration on the part of the appellant. Further, he submitted that since the demand itself is not sustainable, penalty is not imposable and consequently, no interest is also recoverable. In the light of these submissions, impugned order is prayed to be set aside.

4. Learned Authorised Representative supported the findings arrived at in the impugned order and submitted as under:

- i) The appellant's contention that the services rendered by them fall under the category of Vocational training and are exempted under Notification No. 24/2004-ST dated 10.9.2004 was rejected by the Adjudicating Authority on the ground that issuance of amendment in Notification No. 3/2010 ST dated 27.02.2010, the horizon of definition of "vocational training Institute" was narrowed down to only "Industrial Training Institute" or "Industrial Training Centre" affiliated to the National Council for Vocational Training, offering courses in designated trades as notified under the Apprentices Act, 1961(52-of 1961). Therefore, the appellant was not covered under the Vocational training centre / institute as defined under the Notification No. 24/2014-ST dated 10.9.2004 as amended vide Notification No. 03/2010 ST dated 27.2.2010. Further, he submitted that horticulture itself is a commercial activity and subject to service tax.
- ii) As regards the claim of appellant to be eligible to pay service tax as per the provisions of Rule 3 of Works Contract (Composite

Scheme for payment of Service Tax) Rules 2007, it is observed by the adjudicating authority that the appellants had received various amounts on account of Works Contract Services provided / to be provided but have neither provided the actual value of transfer of property in goods involved in execution of works contract nor opted for the Composition Scheme. The provisions of Rule 3(3) of the Composition Rules, 2007 has to be read under the presumption that option has been exercised before the due date of payment of service tax. Once the due date of payment of service tax is crossed, the right to exercise the option under Rule 3(3) of said rules lapses.

iii) On the issue of non-payment of service tax under Mandap Keeper Service, the learned AR submitted that the appellant had argued that the premises was provided on rent not to earn profit but for organisation of seminars to enhance the horticulture activity, but the Adjudicating Authority had held that there was no exemption under any notification regarding providing of premises on rent for organisation of seminars to enhance the horticulture activity and furtherance of agriculture. Therefore, the activity of appellant for allowing their premises for seminar or other function to the clients on consideration is classifiable under Mandap Keeper, hence is taxable.

iv) On the issue of non-payment of service tax under Commercial Coaching and Training Services and services of Designing business and master plan under reverse charge, the learned Authorized Representative stated that a foreign based company namely M/s.PTC+, the Netherlands, business partner of the appellant have provided commercial training or coaching centre service to the appellant. It is argued that since M/s. Stitching PTC+ is one of the

partner of their society, therefore the services rendered by it to the appellant is not to any other service receiver but to himself. Therefore, the essential ingredient of service recipient is absent in the present case and hence there is no service tax liability. The learned AR contended that the appellant had paid consideration to M/s. PTC+ on account of providing commercial training service, therefore the contention of appellant has no substance. On the similar ground appellant is liable to pay service tax under reverse charge on the payment made to M/s. PTC+ for the service of 'Designing Business and Masterplan' which is classifiable under scientific or technical consultancy service.

v) On the issue of non-payment of service tax on amount received from M/s. DCM. Shriram Consolidated Ltd. it is observed that there is an agreement dated 17.11.2008 entered between the appellant and M/s. DCM. From the agreement, it is understood that the activity involved in this matter is related to scientific or technical consultancy service provided to or to be provided by the appellant to the said M/s. DCM Shriram Consolidated Ltd. and received the amount as advance for such service. This amount is liable for payment of service tax.

vi) As regards the invocation of extended period, learned Authorised Representative submitted that the appellant suppressed the fact from the department that they have received various amounts on account of Services of Commercial Coaching and Training Centre, Mandap Keeper, Works Contract, and Scientific or Technical Consultancy services and also paid amounts to M/s PTC+, the Netherlands not having permanent address or usual place of residence in India on account of receipt of Commercial

Coaching Centre Service and Scientific or Technical Consultancy services which covered under taxable services as defined under the Finance Act, 1994 but not paying or short paying service tax on it. They have provided the details of taxable amount of the said services received and rendered only after initiated enquiry/ called for by the department. They have neither shown gross taxable value received by them for providing taxable services in their prescribed ST-3 returns in due manner as provided in law. Had the department not initiated the inquiry against the appellant, the fact of evasion of service tax would not have come into the knowledge of department. Hence the appellant has wilfully suppressed the facts of providing taxable service and non-payment of service tax thereon from the department thereby contravened the provisions of Section 66, 67 and 68 of the Finance Act, 1994. Keeping in view all the facts, impugned order is prayed to be upheld and appeal to be dismissed.

5. Heard both the sides and taken into consideration the submissions made. The issues before us for consideration are as follows:

- (i) Liability of service tax on trainings imparted by the appellant under the head Commercial training or Coaching service;
- (ii) Eligibility of composition scheme under Works Contract Service
- (iii) Service Tax on Mandap Keeper services
- (iv) Liability of service tax under Reverse Charge Mechanism on foreign remittances

(v) Liability of service tax on Scientific & Technical Consultancy received by the appellant

(vi) Liability of service tax on Grants-in-aid

We take up each issue for consideration.

6. **Commercial Training or Coaching services:** It has been pleaded before us that the following demand as tabulated below has been confirmed without taking into account the correct nature of receipts:

Sl. No.	Nature of Receipts	Amounts (in ₹.)
1.	Towards trainings provided to officers from Government Departments and Government bodies	1,10,30,382/-
2.	Towards training provided to farmers	1,83,93,900/-
3.	Towards trainings provided to scientists, teachers and students from universities and education institutions	12,40,061/-
4.	Towards trainings provided to others	61,17,553/-
	Sub-total of receipts towards trainings	3,67,81,896/-
5.	Receipts towards cost of study materials provided during trainings	12,68,940/-
6.	Towards reimbursements of expenses incurred	21,54,450/-
7.	Towards grant/subsidy from National Mission for Medicinal Plants	20,00,000/-
	Total of all Receipts	4,02,05,286/-

From the above, we note that out of total receipts of ₹4,02,05,286/-, receipts only to the extent of Rs. 3,67,81,896/- is towards the actual training of various personnel.

6.1. We now address the demand of service tax on ₹ 3,67,81,896/-. At the outset, we consider the receipts indicated at serial numbers 5,6, & 7 on which service tax demand has been confirmed. As regards the receipt of ₹12,68,940/- which was incurred towards the cost of study materials, we find that notification number 12/2003 -ST dated 20.06.2003 exempts the value of goods and materials sold by the service provider from the

service tax leviable thereon. Similarly in respect of the receipt of ₹ 21,54,450/- which was an amount received towards reimbursement of expenses, we find that this issue stands decided in the case of *Intercontinental Consultants and Technocrats Pvt Ltd., vs UoI* [2018 (10) GSTL 401(SC)] wherein the Apex Court has held that “in the valuation of taxable service, nothing more and nothing less than the consideration paid as quid pro quo for the service can be brought to charge”, and consequently held that Rule 5(1) of the Rules runs counter and is repugnant to Sections 66 and 67 of the Finance Act and held it to be ultra vires. Further, with respect to the receipt of ₹20,00,000/ given as grant-in-aid by the National Mission for medicinal plants, we observe that this issue stands decided by the Supreme Court in the case of *Commissioner vs Apatco Ltd* [2011(23)STR J94(SC)], wherein it upheld the Tribunal’s order that grant-in-aid received from the Government for implementation of schemes were fully utilised for the said activity and no consideration was received for any service to the government, was not taxable. We find that in the instant case, the grant-in-aid had been received from the government for the scheme and is therefore squarely covered by the aforesaid decision.

6.2 We now address the arguments of the Id counsel and Id AR regarding the confirmation of demand of the training/coaching services provided by the appellant. The Id counsel for the appellant has submitted that Training services provided by a vocational training institute were exempt till 26.2.2010. In this regard, it would be appropriate to reproduce the provisions hereinafter to appreciate the submissions.

"Section 65(26)-"commercial training or coaching" means any training or coaching provided by a commercial training or coaching centre:

"Section 65(27) "commercial training or coaching centre" means any institute or establishment providing commercial training or coaching for imparting skill or knowledge or lessons on any subject or field other than the sports with or without issuance of a certificate and includes coaching or tutorial classes.

Section 65(105) "taxable service" means any service provided or to be provided, -

(zze) to any person, by a commercial training or coaching centre in relation to commercial training or coaching:"

We also note that vide **Notification No. 24/2004-ST** dated 10.9.2004, an exemption was provided to 'Commercial Training or Coaching Services' provided by a vocational/recreational training institute.

"In exercise of the powers conferred by sub-section (1) of section 93 of the Finance Act, 1994 (32 of 1994), the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts the taxable services provided in relation to commercial training or coaching, by, -

(a) a vocational training institute; or

(b) a recreational training institute,

to any person, from the whole of the service tax leviable thereon under section 66 of the said Act.

Explanation. For the purposes of this notification, -

(i) "vocational training institute" means a commercial training or coaching centre which provides vocational training or coaching that impart skills to enable the trainee to seek employment or undertake self-employment, directly after such training or coaching;

(ii) "recreational training institute" means a commercial training or coaching centre which provides training or coaching relating to recreational activities such as dance, singing, martial arts or hobbies."

(Emphasis supplied)

The said notification was subsequently amended by Notification No. 3/2010-ST dated 27.2.2010 whereby the definition of 'vocational training institute' was substituted with effect from 27.2.2010, as under:

"(1) vocational training institute" means an Industrial Training Institute or an Industrial Training Centre affiliated to the National Council for Vocational Training, offering courses in designated trades as notified under the Apprentices Act, 1961(52 of 1961)."

Therefore, during the intervening period i.e., 10.09.2004 to 26.2.2010, the scope of the exemption was for all such centres providing vocational training/coaching that impart skills to the trainee. It was submitted by the learned counsel for the appellant that the amendment by Notification No. 3/2010-ST dated 27.2.2010 was prospective in nature & did not have any retrospective effect. We find that in the impugned order, the adjudicating authority has applied the amended definition of vocational training institute for the period prior to the said amendment. We note that in a similar issue in case of **Canan School of Catering of Hotel Management [2019 (22) GSTL 61 (Tri. Chennai)]**, the Tribunal observed as under:-

"6. The only dispute is applicability of the Notification No. 9/2003, as amended. We note that the original authority examined the scope of exemption in the context of amendment carried out in 2010. In 2010 amendment statutorily changed the scope of exemption, restricting the same specifically to the work and trade as recognized by the Apprentice Act, 1961. We note that the present dispute relates to the period which is before 2010. While we hold that the appellants are engaged in providing Commercial Training or Coaching, the courses offered are of such nature which is recognized as vocational courses

in a particular area of specialization. It is also a fact that these are not academic courses like PGDM/MBA which were examined by the Tribunal in *Great Lakes Institute of Management Ltd.* - [2013 \(32\) S.T.R. 305](#) (Tri.-LB) and *Sadhana Educational & People Dev. Services Ltd.* - [2014 \(33\) S.T.R. 575](#) (Tri.-Mum.). The Ld. AR relied on these decisions.

7. The scope of term vocational training institute which is redefined only in 2010; on plain reading of exemption it is seen that those courses which provide such skills to the trainee to seek employment directly after such training or coaching shall be excluded from tax liability. We are of the considered opinion that the present courses are covered by such exemption in the said notification. We also note that the amendment carried out by Notification No. 3/2010 is clearly prospective as explained in the budget papers for the year 2010-11. Even otherwise, we note that the courses cannot be considered equivalent to a general academic course so as to exclude from the exemption. Accordingly, the impugned order is set aside and the appeal is allowed.”

6.3 We note that the adjudicating authority has held that horticulture itself is a commercial activity and subject to service tax and no specific exemption in relation to horticulture -related activities is available. Therefore, it has been held that the activity of imparting training to the various clients including horticulture Extension offices of State Agriculture and Horticulture department other Government Bodies, Scientists, Students, Farmers etc is covered under the activity of commercial coaching and training. We note that there is no dispute that the appellant provided training to farmers, students, teachers in the field of horticulture. Such training would enable the trainee to upskill themselves and carry

forward the objective of the institute, viz., promotion of agricultural entrepreneurship. There is no dispute that such trainings did enable the trainees to seek employment in the field of their choice, or to improve the yield of the farmers by sharing and training them to the latest technological and other advancements in their field. Therefore, we are of the view that as long as there is the ability to seek employment or self-employment in terms of the explanation of the notification supra, the benefit of exemption cannot be denied, as has been held by this Tribunal in the case of M/s Frankfinn Aviation Services Pvt Ltd., vs Commissioner of Service Tax, New Delhi reported in 2017 (5) GSTL 154 (Tri. Del). Consequently, we hold that the appellant is entitled to the exemption for the period prior to the amendment dated 27.02.2010. As regards the demand for the subsequent period, we hold that the same would be taxable. However, the demand would be restricted to the normal period only.

7. **Works Contract Service:** We now take up the second issue for consideration. The impugned order has confirmed the demand of service tax of Rs. 25,34,202/- with respect to the execution of greenhouse projects and other projects under the category of 'Works Contract Services' after denying the benefit of Composition Scheme availed by the Appellant. We find that the impugned order has not denied that the appellant had rendered 'Works Contract Service'. The dispute pertains limitedly in respect of the extension of benefit of the composition scheme without prior intimation to the Department. It has been submitted before us that the computation of demand is incorrect. It was also contended that the service tax in respect of works contract services has already been paid by the

appellant by availing the composition scheme. We observe that the impugned order has denied such benefit on the ground that neither the actual value of goods was provided by the Appellant nor an advance intimation about opting for the composition scheme. In this regard we note that rule 3(3) of the Composition Scheme Rules provide that service provider, to avail the benefit of the composition scheme, is required to exercise such an option prior to payment of service tax in respect of such works contract. We note that the said rule does not prescribe for any intimation for exercising such an option, and it only prescribes for exercising of the option prior to payment of Service Tax. Had it been the intention of the Legislature that the option was to be exercised in writing before an officer of the Department, the said legal provision would have specifically provided for exercising such an option in writing. Further, if it is to be understood that the said Rule provided for an intimation for exercise of an option, non-intimation is merely a procedural irregularity and substantive benefit cannot be denied to the appellant. We rely on the decision of this Tribunal in the case of M/s J.R. Construction vs Commissioner, Jaipur-1 [2019(7)TMI 1793-CESTAT-New Delhi] in this regard. In addition, we note a portion of the demand pertains to grants-in-aid, which has already been held to be non-taxable under the said category. Therefore, we are of the opinion that the appellant is eligible to avail the benefit of the Composition scheme, and it is noted that the appellant had already paid the Service Tax on the same. Therefore, the said demand is also not sustainable.

8. **Mandap Keeper Services:** We note that the impugned order has confirmed the demand of service tax of Rs. 93,361/- on the

amount received by the appellant for leasing out space for conducting various educational seminars, under the category of "Mandap Keeper Services". The relevant provisions with respect to 'Mandap Keeper Services' are extracted as under:-

"Section 65(66) "mandap" means any immovable property as defined in Section 3 of the Transfer of Property Act, 1882 and includes any furniture, fixtures, light fittings and floor coverings therein let out for a consideration for organizing any official, social or business function. Explanation. For the purposes of this clause, social function includes marriage;

Section 65(67) "mandap keeper" means a person who allows temporary occupation of a mandap for a consideration for organizing any official, social or business function.

Explanation; For the purposes of this clause, social function includes marriage.

Section 65(105) "taxable service" means any service provided or to be provided, -

(m) to any person, by a mandap keeper in relation to the use of mandap in any manner including the facilities provided or to be provided to such person in relation to such use and also the services, if any, provided or to be provided as a caterer;"

From the above provisions, it is clear that for any service to be taxable under 'mandap keeper service', the immovable property has to be let out for organizing any official, social or business function. In the present case, it has been submitted before us that the property was let out by the Appellant for conducting the seminars on horticulture only which is for the

educational/academic purpose and would thus, fall outside the purview of 'mandap keeper service' and hence, demand confirmed is not sustainable. We note that the appellant has received consideration under the head 'Booking of venue', which was let out for conducting seminars or other functions by their clients. It has been submitted that the appellant was registered as a Society and the aim was to enhance horticulture activity, and was not run for profit. We are of the opinion that the appellant's activity of renting out the property for holding of seminars by their clients is squarely covered by mandap keeper service. Hence, the demand is upheld for the normal period.

9. Liability of service tax under Reverse Charge

Mechanism on foreign remittances: We now take up the issue regarding the confirmed demand of service tax of Rs. 21,73,714/- under reverse charge mechanism on the foreign remittances made by the appellant to M/s. Stitching PTC Netherlands for providing training to the trainers/managers sent by the Appellant to Netherlands, under the category of 'Commercial Training or Coaching Services'. The demand is elaborated in the Table hereinafter which is as follows:

Sl No	Activity	Service Tax payable In Rs
1	Training of Trainers & Managers at the Netherlands	1060915/-
2	Manager Training	253930/-
3	Training of Trainers & Managers, Training & Expert Mission	858869/-

In this context, the relevant provisions with respect to 'Commercial Training or Coaching Services' have been extracted hereinafter:

"Section 65(26)-"commercial training or coaching" means any training or coaching provided by a commercial training or coaching centre:

Section 65(105) "taxable service" means any service provided or to be provided, - (zze) to any person, by a commercial training or coaching centre in relation to commercial training or coaching:"

9.1 Rule 3 of Import Service Rules provides that the services of 'Commercial Training or Coaching Services' are performance-based services i.e. the place of performance of such service is the place of provision of such service. Relevant extract of Rule 3 of Import of Service Rules is produced as under: -

"3. Taxable services provided from outside India and received in India.- Subject to section 66A of the Act, the taxable services provided from outside India and received in India shall, in relation to taxable services-

(i) specified in sub-clauses (d), (m), (p), (q), (v), (zzq), (zza), (zzzb), (zzzc), (zzzh), (zzzr), (zzzy), (zzzz), (zzza), (zzzzm), (zzzzu), (zzzzv) and (zzzzw) of clause (105) of section 65 of the Act, be such services as are provided or to be provided in relation to an immovable property situated in India;

(ii) specified in sub-clauses (a), (f), (h), (i), (f), (1), (n), (o), (vw), (2), (zb), (c), (zi), (zj), (zn), (zo), (zq), (zr), (zt), (zu), (zv), (zw), (zz), (zza), (zze), (zzd), (zzf), (zzg), (zzi), (zzl), (zzm), (zzo), (zzt), (zzv), (zzw), (zzx), (zzy),

(zzzd), (zzze), (zzzf), (zzzzg). (zzzzh), (zzzzi), (zzzzk), (zzzzl) and (zzzzo) of clause (105) of section 65 of the Act, be such services as are performed in India:]

Provided that where such taxable service is partly performed in India, it shall be treated as performed in India and the value of such taxable service shall be determined under section 67 of the Act and the rules made thereunder:

Provided further that where the taxable services referred to in sub- clauses (zzg) and (zzi) of clause (105) of section 65 of the Act, are provided in relation to any goods or material or any immovable property, as the case may be, situated in India at the time of provision of service, through internet or an electronic network including a computer network or any other means, then such taxable service, whether or not performed in India, shall be treated as the taxable service performed in India;

(iii) specified in clause (105) of section 65 of the Act, but excluding-

(a) sub-clauses (zzzo) and (zzzv);

(b) those specified in clause (i) of this rule except when the provision of taxable services specified in clauses (d), (zzzc), (zzzr) and (zzzzm) does not relate to immovable property; and

(c) those specified in clause (ii) of this rule, be such services as are received by a recipient located in India for use in relation to business or commerce.

Provided that where the taxable service referred to in sub-clause (zzzzj) of clause (105) of section 65 of the Act is received by a recipient located in India, then such taxable service shall be treated as taxable service provided from

outside India and received in India subject to the condition that the tangible goods supplied for use are located in India during the period of use of such tangible goods by such recipient.

9.2 We note that in the impugned order, it has been held that as M/s Stitching PTC had utilised an address of M/s Vaish Associates for the purpose of obtaining a TAN and PAN. As M/s Stitching PTC have a separate PAN & TAN, hence, held that it cannot be said that the training was given to themselves. In the present case, we observe that the training services have been provided by M/s Stitching PTC Netherlands to trainers/managers in Netherlands, i.e. a place outside India. Thus, since the place of performance of such service is outside India, the same is not taxable. We observe that this issue stands covered in the following decisions:

- (i) Commissioner of Central Excise and Service Tax, vs Maersk India Pvt Ltd: [2015(40)STR 1059(Bom)] wherein the High Court of Bombay held in Para 7 that where the coaching service was performed/rendered abroad, the same cannot be liable to tax.
- (ii) Firmenich Aromatics India Private Limited vs Commissioner, C. Ex & ST, Daman [2018(10) TMI 655-Cestat-Ahm.] wherein in Para 6 it was held that the services were performed outside India, and the payments were reimbursements of the expenses, hence there was no liability of tax.

9.3 However, as regards the remaining two trainings, it is not clear whether the said two trainings were also conducted at Netherlands, which would then not be liable to tax or whether they were conducted in India, as such training conducted in India would

then be liable to tax. This aspect would have to be verified by the original authority and therefore, we remand this issue to the adjudicating authority to examine whether the same were provided in India or Netherlands, and decide the matter.

10. Liability of service tax on Scientific & Technical Consultancy received by the appellant: We note that the impugned order has confirmed the demand of service tax of Rs. 5,38,952/- with respect to the activity of design of business & master plan undertaken by M/s. Stitching PTC Netherlands for the Appellant under the category of 'Scientific or Technical Consultancy Services'. The relevant provisions with respect to 'Scientific or Technical Consultancy Services' are extracted as under:-

"Section 65(92) "scientific or technical consultancy" means any advice, consultancy, or scientific or technical assistance, rendered in any manner, either directly or indirectly, by a scientist or a technocrat, or any science or technology institution or organization, to any person, in one or more disciplines of science or technology:

Section 65(105) "taxable service" means any service provided or to be provided, -

(za) to any person, by a scientist or a technocrat, or any science or technology institution or organization, in relation to scientific or technical consultancy;"

10.1 From the above, it is evident that advice/consultancy has to be rendered by a scientist or a technocrat, or any technological institution or organisation, would fall within the purview of this service. In the present case, what has been received by the appellant from M/s Stitching PTC is in respect of horticulture, which

does not fall within the definition of this service. We note that the Tribunal in the case of Administrative Staff College of India vs Commissioner, C.Ex, Hyderabad [2009(14) STR 341 (Tri. Bang)] has held as follows:

“14. It is very clear that in order to assert that an organisation is providing scientific or technical consultancy, two basic ingredients have to be established. The organisation must be a science or technology institution. The consultancy must relate to one or more disciplines of science or technology.....”

10.2 In the instant case, what has been received is design of business and master plan, which as per the above decision cannot be classified as Scientific or Technical consultancy. Consequently, the demand under this head does not stand.

11. As regards the invocation of extended period, we observe that no cogent evidence has been adduced for invocation of the extended period, or establish suppression of facts with an intent to evade tax. Therefore, the demand for extended period, and the penalties are set aside. However, the liability to interest will be recalculated as per the demand to be recalculated by the adjudicating authority.

12. In view of the above discussions, we conclude as follows:

- (i) Liability of service tax on trainings imparted by the appellant under Commercial training or Coaching service: The demand is exigible to service tax post the amendment brought in by Notification 3/2010 dated 27.2.2010. We remand this matter to the adjudicating authority to recalculate the demand keeping in view that the demand will be for the normal period only.

- (ii) Eligibility of composition scheme under Works Contract Service: We hold that the appellant is eligible for the composition scheme, and consequently, the demand is set aside.
- (vii) Service Tax on Mandap Keeper services: We confirm the demand, however we restrict it to the normal period only.
- (viii) Liability of service tax under Reverse Charge Mechanism on foreign remittances: We set aside the demand in respect of the training held in Netherlands. We remand the matter to the adjudicating authority to ascertain the place of performance of the two trainings to calculate the liability of service tax under reverse charge mechanism, if any.
- (ix) Liability of service tax on Scientific & Technical Consultancy received by the appellant: We set aside the demand.
- (x) Liability of service tax on Grants-in-aid: We set aside the demand.

Accordingly, the impugned order is upheld to the extent indicated above by way of remand, and the appeal is allowed partially.

(Order pronounced in the open Court on 10/07/2024)

(BINU TAMTA)
MEMBER (JUDICIAL)

(HEMAMBIKA R. PRIYA)
MEMBER (TECHNICAL)