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

Appeal No. ST/100 /2008 Date 01/08/2008

Assistant Registrar
C.E.S.T.A.T, New Delhi

To :
SRI CHAITANYA EDUCATIONAL COMMITTEE
1-2/4,CHAITANYA NAGAR, TADIGADAPA, PARANKI,
VIJAYAWADA, KRISHNA DISTT, ANDHRA PRADESH
521137

SRI CHAITANYA EDUCATIONAL COMMITTEE Appellant
Vs
C.C.E. JAIPUR I Respondent

I am directed to transmit herewith a certified copy of **Final order No.** ST/149 2008 Customs dated 9/7/08 passed by the Tribunal under Section 129, (B) of the Customs Act,1962 & Financial Act 1994 relating to Service Tax
alongwith Stay order No. ST/281/08

Assistant Registrar
(Customs Appeal Branch)

Copy to :
1. Respondent
C.C.E. JAIPUR I
N.C.R.BUILDING, STATUE CIRCLE, "C" SCHEME, JAIPUR 302005.
2. Adv. / Consult Sh. R.P. Mullick, Adv, C/o Appellant
3. S.D.R.
4. J.C.D.R.
5. Bar association, CESTAT, New Delhi
6. M/s. Deeparchi Publications, M-93, Marg. 46, Saket, New Delhi 110017
7. M/s Centax Publictions (P) Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi -
8. Excise & Customs cases, B-37, Sector -1, NOIDA - 201301 Gautam Budh Nagar, (U.P.)
9. Raghuraman's 44-B, Regal Flat,Shipra Suncity, Indirapuram - 201010,Ghaziabad, DT, U.P.
10. Nidheshak publications, I.P.Estate, new Delhi
11. Taxmann Allied Service Pvt Ltd., 21/35, West Punjabi Bagh, New Delhi - 110026
12. Commercial Laws of India Pvt Ltd Post Bag No. 1033, No.70(Old No. 88), Thyagaraya Road, T. Nagar,Chennai 60017
13. Taxindiaonline.com Pvt.Ltd, B-XI/8183,Vasant Kunj, New Delhi - 110070
14. Office Copy
15. Guard file

Assistant Registrar
(Customs Appeal Branch)

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
WEST BLOCK NO. 2, R.K. PURAM, NEW DELHI

COURT – II

ST/STAY NO. 388/08 IN AND SERVICE TAX APPEAL No. 100 of 2008

[Arising out of Order-in-Appeal No. 190(RKS)ST/JPR-I/2007 dated 12.11.2007 passed by the Commissioner (Appeals), Customs & Central Excise, Jaipur]

For approval and signature:

Hon'ble Mr. S.S. Kang, Vice President,
Hon'ble Mr. Rakesh Kumar, 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 would 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?	

M/s. Chaitanya Educational Committee — Appellants

Vs.

CCE, Jaipur — Respondent

Appearance:

Shri R.P. Mullick, Advocate for the appellants;
Shri A.K. Madan, Departmental Representative, for the Revenue

Coram:

Hon'ble Mr. S.S. Kang, Vice President,
Hon'ble Mr. Rakesh Kumar, Member (Technical)

Date of Hearing: 9th July, 2008

FINAL ORDER NO. ST/149/08 **dated** 9/7/08
Stay Order No ST/281/08

Per S.S. Kang:

Applicants filed stay application for waiver of pre-deposit of the amount of service tax Rs. 25,07,717/-. Demand was confirmed on the ground that the applicants are providing commercial training and coaching service. Admitted facts are that the applicants are running academy providing training and coaching for consideration to the students for getting admission in engineering institute. Contention of the applicants is that they are registered under the Cooperative Societies Act and is a charitable institute, and therefore, are not liable to pay service tax. Appellants relied upon the decision of the Tribunal in the case of Greatlakes Institute of Management Ltd. vs. CST, Chennai, reported in 2008 (9) STR 560 (Tri.-Chennai). The appellants also submitted that training or coaching should be provided by a commercial institute and appellants are not commercial institute, therefore, they are not liable to service tax.

2. The contention of the Revenue is that as per definition under clause 26 of Section 65 of the Finance Act, 'Commercial training and

Coaching' 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 but does not include pre-school coaching and training centre or any institute or establishment which issued any certificate or diploma or degree or any educational qualification recognized by law for the time being in force. Contention of the Revenue is that in view of the above definition, if any institute provides commercial training or coaching it is liable for service tax. In the present case the applicants are providing training and coaching for consideration on commercial basis to the students for getting admission in engineering institute, therefore, they are liable for service tax.

2. In reply the applicants submitted that they have now closed the institute at Kota due to financial constraints.

3. In this case the applicants are providing training and coaching on commercial basis to the students for getting admission in engineering institute. As per definition of commercial training or coaching centre as provided under the Act, any commercial 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. Reliance of the applicants on the decision of M/s. Great Lakes Institute of Management Ltd. (supra) will not help the applicants/appellants as in that case Great Lakes Institute of Management (supra), the assessee, conduct post graduate program and execute M.B.A. in collaboration with foreign university, whereas the facts in the present case are different. In the present case the applicants

are providing training and coaching for getting admission in engineering institute. Therefore, ratio of the above decision is not applicable in the facts of the present case. In these circumstances, as the applicants are providing commercial training or coaching, prima facie, we find it is not a fit case for total waiver of pre-deposit of amount of service tax. Keeping in view the facts and circumstances and financial hardship applicants are directed to deposit 50% of the amount of service tax within 8 weeks. On deposit of the above mentioned amount pre-deposit of remaining amount of tax is waived.

4. We find that the Commissioner (Appeals) dismissed the appeal as the appellants had not complied with the condition of the stay order. The Commissioner (Appeals) has not decided the issue on merit. As we have directed the appellants to deposit 50% amount of the demand, therefore, impugned order is set aside and the matter is remanded to the Commissioner (Appeals) to decide afresh, on showing proof of deposit of above mentioned amount and after affording opportunity of hearing to the appellants. Appeal is allowed by way of remand.

(Dictated & pronounced in the Open Court.)

(S.S. KANG)
VICE PRESIDENT

(RAKESH KUMAR)
MEMBER (JUDICIAL)

Dated 10th July, 2008
RK