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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/345 /2008 - CU[DB] Date 03/11/2008

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

To :
C.C.E ALLAHABAD
38,M.G.MARG, CIVIL LINES, ALLAHABAD

C.C.E ALLAHABAD Appellant
Vs
M/S KRISHNA COACHING INSTITUTE Respondent

I am directed to transmit herewith a certified copy of **Final order No**. ST/316/08 **CU[DB]** dated 24.10.08 passed by the Tribunal under Section 129, (B) of the Customs Act,1962 & Financial Act 1994 relating to Service Tax

Assistant Registrar
(Customs Appeal Branch)

Copy to :

1. Respondent
   M/S KRISHNA COACHING INSTITUTE
   30,MLN ROAD,ALLAHABAD (U.P)
2. Adv. / Consult
   MR.MONICA AGARWAL
   30,MOTI LAL NEHRU ROAD ,ALLAHABAD
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 - 3
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
13. Taxindiaonline.com Pvt.Ltd. B-XI/8183.Vasant Kunj. New Delhi - 110070
14. Easy Service Tax Online Dot Com Pvt.Ltd.407A.Iscon Mall.Above Star India Bazar.Satellite Road.Ahmedabad-15
15. Office Copy
16. Guard file

Assistant Registrar
(Customs Appeal Branch)

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

West Block No.2, R.K.Puram, New Delhi

COURT-I

Date of hearing:29.8.2008
Date of pronouncement: 24.10.2008

Service Tax Appeal No.345 of 2008

Arising out of the order in appeal No.13-ST/Alld/2008 dated 25.3.08 passed by the Commissioner (Appeals), Central Excise, Allahabad

For Approval and Signature:

Hon'ble Mr. Justice S.N. Jha, President
Hon'ble Mr. M. Veeraiyan, Member (Technical)

1	Whether Press Reporter may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	No
2	Whether it should be released under Rule 27 of CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	Yes
3	Whether their Lordships wish to see the fair copy of the Order?	Seen
4	Whether Order is to be circulated to the Departmental authorities?	Yes

Appellant — Respondents

C.C.E., Allahabad vs. M/s Krishna Coaching Institute

Appearance:

Ms Monica Agarwal, C.A. for the appellant
Shri A.K. Madan, Authorized Departmental Representative (DR) for the Revenue
Coram: Hon'ble Mr. Justice S.N. Jha, President
Hon'ble Mr. M. Veeraiyan, Member (Technical)

Final Order No. ST/316/08

Per M. Veeraiyan:

This is an appeal by the Department against the order of the Commissioner (Appeals) No13/ST/ALLD/2008 dated 25-3-08.

2. Heard both sides.

3. The relevant facts, in brief, are as follows:

a) The respondent is engaged in providing coaching for various entrance exams. They have collected fees in advance amounting to Rs.5,98,583/-, during April' 03 to June' 03, from the trainees/ students for the coaching to commence on or after 1-7-03.

b) Service tax became leviable with effect from 1-7-2003 on " Commercial Training and Coaching" under the heading 65(105) (zzc) in view of the Notification No/2003-ST dated 20.06.2003.

c) Board vide Circular No 65/14/2003-dated 5-11-2003 clarified that where the value of taxable service has been received by the service provider in advance for services which became taxable subsequently, the service tax has to be paid on the value of service amount which can be worked out pro-rata basis.

d) With a view to remove doubts, Rule 6(1) of the Service Tax Rules was amended on 9-7-2004 by inserting an explanation.

e) Section 65(105) defining taxable service was amended by Finance Act 2005 to include 'services to be provided'. Section 67 providing valuation of taxable service was also amended by Finance Act 2005 to include 'services to be provided'.

f) Show cause notice dated 24-7-06 was issued proposing demand of service tax amounting to Rs.47,833/-and proposing penalty under various sections. The original authority confirmed the demand and imposed a penalty of Rs.47,833/- under Section 76 and Rs.95,686/- under Section 78.

g) The Commissioner (appeals), however, held that in respect of payments received prior to 1-7-2003, the service tax is not leviable and accordingly set aside the order of the original authority.

4. The learned DR made the following submissions:

a) The Commissioner (Appeals) has not appreciated the fact that the party did not submit any tangible evidence/documents which might establish that the fees collected during the month of April, 2003 , May, 2003 & June, 2003 from the students were only for the Training/Coaching imparted to the batch during the period from 1.4.03 to 27.6.03.Besides, he rejected the views of adjudicating authority that the fees collected in the month of May and June, 2003 was not for the batch started from 1.4.03 and ended on 27.6.03.

b) The party has not only suppressed the information and value of service tax form the Department but also did not submit the details as required during the adjudication proceedings nor during the appeal proceedings, hence letting off the party on the ground of limitation is highly objectionable and bad in law.

5. The learned authorised representative for the respondent made the following submissions:

a) The provision to impose service tax has been inserted by the Finance Act 2005 with prospective effect but not retrospective effect.

b) If by the CBEC Circular, the law could have been modified/amended against the assesee, it meant there was not having any reason for the amendment made by the Finance Act 2005 with prospective effect. A reliance has also been placed from the decision in BCCI vs. C.C.E. – 2007 (7) STR 384 (T).

c) Even otherwise, the CBEC had clarified the issue only on 5.11.2003 and the same could not have been affected prior to the date of the circular by assuming that assessee should have known that the CBEC shall clarify the same subsequently. The above point was also considered by the learned Appellate authority in order in appeal.

d) Their bona fide belief was on record and also admitted by the learned Appellate authority. It should not have been expected that the assesee had known that the Board shall clarify the particular point subsequently in such a direction as adopted by the Board subsequently.

6.1 We have carefully considered the submissions from both sides and perused the changes in the provisions of the Act and the Rules. Section 66 is the charging section. The liability to tax in this case was crystallised by insertion of section 65(105)(zzc) in the list of services chargeable to tax which was with effect from 1-7-2003. There is no dispute about the nature of service to sought to be taxed, the person liable to pay, or the rate of tax payable.

6.2 At this juncture, it may be appropriate to consider taxable event relating to other indirect taxes. Under the Central Excise law the liability arises as soon as the goods are manufactured but the payment is postponed to later date based on the date/ month in which the excisable goods are removed. Whether the removal is on sale and if so the date of payment of sale consideration are not relevant to determine liability to duty.

Under the Customs Law, the liability to import duty arises as soon as import is complete. In the case of import by sea, the liability is fastened as soon as the vessel enters territorial waters of India. The date of payment could be before the arrival of the vessel or after arrival before clearance from the port or cleared to warehouse under bond , then, at the time of clearance from the warehouse. The payment of Customs duty is not linked to payment of sale consideration to the exporter for the consignment imported.

6.3 However, in respect of service tax, the actual date of payment of the tax is linked with the date of receipt of payment of charges for the services. This is done as a matter of concession by way of postponing the payment and rationale is to not to burden the provider of service to pay the tax from his packet even before receipt from the service recipients. The Department has no role in deciding the date of payment of charges for the services and the arrangement in this regard is flexible as decided between the provider and receiver of the services. Due date for payment of tax may change but will not extinguish the liability to tax. A person who collects the charges in advance can not be allowed a more disadvantageous position compared to a person who collects later. The provision relating to pay later with a view to mitigate the difficulties of service provider can not be allowed to be taken advantage of by a person who receives payment in advance.

6.4 In the present case, payment was received in advance for the services yet to be rendered; and services were rendered later when service tax was attracted. The bill if any prepared was for services yet to be rendered. The date of preparation of the bill or the date of receipt can not be considered as date of rendering service.

6.5 Amendments to Section 65(105) defining taxable service and Section 67 providing for valuation of taxable service were carried out by Finance Act 2005 to include 'services to be provided' and thus enlarging the term taxable service to include the services 'to be provided'. These amendments provides for collection of service even before rendering the service on the ground advance payments have been received before rendering the services. If the service provider received the payments ,say in august 2003, for a course to be conducted in December 2003, then he could not have been made to pay the service tax in September 2003 itself before the above said amendments by Finance Act 2005 enlarging the term taxable service to include the services 'to be provided'. After the amendments this is permissible.

6.6 The findings of the Commissioner (Appeals) that since the value has been received prior to levy of service tax on such service, though the service has been provided after levy of service tax, no service tax is leviable is erroneous. The respondent has no vested right to collect in advance the fees for conducting the training programme to be conducted after 1.7.2003. The main obligation to pay tax arises out of Finance Act, 2003 and the service has been brought into tax nets by Notification No. 7/2003-ST dated 20.6.03 with effect from 1.7.03.This main obligation cannot be altered by subsidiary obligation like taking registration as an assessee, issuing invoices, filing returns etc. Even if the amount is collected in advance, it is not impracticable to raise an invoice indicating the service charges (noting that the amount already stands paid) and indicating service tax payable.

6.7 As the services have been actually rendered prior to 1.7.03, the payment received earlier does not make it as service charges attributable to services rendered prior to 1.7.03. Therefore, service tax is payable. To that extent the order of the Commissioner (Appeals) is erroneous.

7. However, the Commissioner' (Appeals) finding that nondisclosure of value received before 1.7.03 against coaching services was due to bona fide interpretation Act/Rules and cannot be considered as suppression does not need interference.

8. The order of the Commissioner (Appeals) is modified to the extent that on merits the findings are erroneous and the original authority's order ,in this regard is upheld. However, the findings of the Commissioner (Appeals) that the extended period is not applicable are upheld. The party gets relief only on the ground of limitation.

9. The appeal is disposed of in above terms.

(Pronounced in open Court on 24.10.2008)

(Justice S.N. Jha)
President

(M.Veeraiyan)
Member(Technical)

scd/