

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

Appeal No. ST/168,554, 314/2006 - CU[DB]  
ST/82,723/07

Date 22/12/2008

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

To :  
M/S ALLEN CAREER INSTITUTE

C-210/2, TALWANDI KOTA

M/S ALLEN CAREER INSTITUTE

Appellant

Vs  
Respondent

THE COMMISSIONER OF CENTRAL EXCISE, JAIPUR I

I am directed to transmit herewith a certified copy of **Final order No. ST/429-33/08**

**CU[DB]** dated 16.12.08

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

THE COMMISSIONER OF CENTRAL EXCISE, JAIPUR I

NCRB, STATUE CIRCLE, C-SCHEME, JAIPUR

2. Adv. / Consult

MR.K.K ANAND

A-5.BASEMENT,LAJPAT NAGAR-III NEW DELHI-24

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 Publications (P) Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New - 3

8 Excise & Customs cases, B-37, Sector -I, 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 Puniabi Bagh, New Delhi - 110026

12 Commercial Laws of India Pvt Ltd Post Bag No. 1033, No.70(Old No. 88), Thyagarava Road, T. Nagar, Chennai

13 Taxindiaonline.com Pvt.Ltd. B-XI/8183, Vasant Kuni, New Delhi - 110070

14 Easy Service Tax Online Dot Com Pvt.Ltd.407A, Iscon Mall, Above Star India Bazar, Satellite Road, Ahmedabad-1

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17 m/s P.T. Education & Training Service Ltd  
PT Kota centre, COE-04, AERODRUM  
Circle Kota.

Assistant Registrar  
(Customs Appeal Branch)

18 m/s Career Care  
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Allahabad

P.T.O -

**CUSTOMS, EXCISE & SERVICE TAX  
APPELLATE TRIBUNAL  
PRINCIPAL BENCH, NEW DELHI**

**COURT NO.III**

**ST/Appeal Nos. 168/06, 82, 723/07, 554/06 & 314/06**

(Arising out of order in appeal No. 38/ST/All/2007 dated 27.7.07, passed by the Commissioner of Central Excise (Appeals), Allahabad, No. 31(MPM) ST/JPR-I/2006 dtd. 4.5.2006 passed by the Commissioner of Central Excise (Appeals), Jaipur, No. IND-I/318/2006 dtd. 28.9.2006 Order-in-Original No. 04/2005 dtd. 25.11.2005 passed by the Commissioner of Central Excise, Jaipur)

For approval and signature:

Hon'ble Mr. M. Veeraiyan, Member(Technical)  
Hon'ble Mr.P.K. Das, Member(Judicial)

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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?
- 

Y-n,

Y-n m.

Sen.

Y-n

1. M/s. Pt-Education & Training Service Ltd.,
2. M/s. Allen Career Institute,
3. M/s. Career Care,
4. M/s. Career Point

Appellants

Reptd. By Shri B.L. Narasimhan,  
Shri Hemant Bajaj, and Shri Vivek Sharma, Advocates

Vs

CCE, Kanpur/Jaipur/Indore,  
& vice versa

Respondents

(Rep. by Mrs. A.P. Tiwari, Jt. CDR)  
& Mr. Amit Jain, Mr. A.K.Madan, DRs

Coram: Hon'ble Mr. M. Veeraiyan, Member(Technical)  
Hon'ble Mr P.K. Das, Member(Judicial)

Date of Hearing: 26.8.08

Date of decision: 16.12.08

Penal

Order No. 57/429-433/2008**Per P.K. Das:**

Common issue is involved in these appeals and therefore, all are being taken up together for disposal.

2. The issue involved in these appeals is whether the Service Tax is payable/leviable on the amount of advance i.e. lumpsum payment received prior to 1.7.2003, (the date when Service Tax was levied on "Commercial training or Coaching Centre), when the service was actually rendered after 1.7.03.

3. The relevant facts of the case, in brief, are that the appellants are engaged in providing coaching service. On 01.7.2003, Service Tax was introduced on "Commercial Training or Coaching Centre". The appellants were registered with Central Excise department. It was found that the appellants collected the fees on the basis of the contracts, prior to 01.7.2003, when services were rendered from 01.7.2003. Show cause notices were issued proposing demand of tax on the value of taxable service received prior to 01.7.2003 and services were rendered after 01.7.2003. The adjudicating authority confirmed the demand of tax along with interest in all the cases and in Appeal No. ST/723/07 and ST/168/06, penalty was imposed of equal amount of tax.

4. The submission of the learned Advocate on behalf of the appellants, is as under:-



- a) Service contract entered and consideration paid prior to 1.7.03 and therefore, tax cannot be levied for service rendered after 1.7.03. He relied upon the decision of the Tribunal in the case of Reliance Industries Vs CCE reported in 2008 (10) STR 243, Art Leasing Ltd Vs CCE, Cochin reported in 2007 (8) STR 162 (Tri. Bang).
- b) Service tax was not payable on advance receipt during the relevant period, as there was no provisions in the Finance Act, 1944 or the Service Tax Rules for recovery of the tax against advance receipt. He drew the attention of the Bench various provision of Finance Act, 1994 and Rules. He relied upon the Board Circular F No. B-1/6/2005-TRU dated 27<sup>th</sup> July, 2005. Reliance is placed on the decision of the Hon'ble Supreme Court in the case of CIT Vs. Srinivas Sethy, reported in 1981 (128) ITR 294 (SC).
- c) The Act did not provide for bifurcation of value of the service. It is his contention that only from 9.7.2004 by insertion of Explanation to Rule 6(1) of Service Tax Rules, it was prescribed for bifurcating the value of taxable service, received before providing of the services, which cannot apply retrospectively. Reliance is placed on the decision of the Supreme Court in the case of Seco Forex Internatioanl Dril Inc. vs. CIT, Dehradun, 2005 (12) SCC 717.
- d) By Board Circular No. B.11/1/2002-TRU dated 1.8.02, it is clarified that no service tax will be payable on membership fee already collected, prior to the date on which new service tax on "clubs and

fitness centres” has come into force. He submits that the said circular is similarly applicable in the present case.

e) Imposition of penalty and the extended period of limitation are not applicable as the dispute relates to interpretations of provisions of law and cum-tax benefit to be extended. The learned Advocate filed written notes and compilation of relevant provision of Finance Act and Rules and case laws.

5. The learned Jt. CDR reiterates the finding of the Commissioner. She submits that Service Tax was levied on “Commercial training or Coaching centre” from 1.7.03. She further submits that payment of Service Tax is linked with rendering of service. She also submits that in this case, admittedly, the appellant rendered the service after 1.7.03 and they were liable to pay service tax on the taxable value, even which was recovered by them prior to 1.7.03. She drew the attention of the Bench the various provisions of Finance Act and its Rules. She also filed Written Notes of argument with copy of case laws.

6. Heard both sides and perused the records.

7. For the purpose of proper appreciation of the case, the relevant provisions of the Finance Act, 1994 and its Rules, as it stood during the relevant period are reproduced below:-

**FINANCE ACT, 1994 FROM 1.7.2003 ONWARDS**

Section 65. Definition. – In this Chapter, unless the context otherwise requires, -

XXX

XXX

XX



(105) "taxable service" means any service provided, -

(ZZC) to any person, by a commercial training or coaching centre in relation to commercial training or coaching;

**Charge of Service Tax.**

66.(1) There shall be levied a tax (hereinafter referred to as the service tax) at the rate of eight percent of the value of the taxable services referred to in sub-clause, .... of clause (105) of section 65 and collected in such manner as may be prescribed.

**Valuation of taxable services for charging service tax.**

67. For the purpose of this chapter, the value of any taxable service shall be the gross amount charged by the service provider for such service rendered by him.

**Payment of service tax.**

68(1) Every person providing taxable service to any person shall pay service tax at the rate specified in section 66 in such manner and within such period as may be prescribed.

**SERVICE TAX RULES, 1994**

**Payment of service tax.**

6(1) The service tax on the value of taxable services received during any calendar month shall be paid to the Central Government by the 25<sup>th</sup> of the month immediately following the said calendar month.

**SERVICE TAX RULES, 1944 FROM 9.7.2004 ONWARDS**

Rule 6(1) The service tax on the value of taxable services received during any calendar month shall be paid to the credit of the Central

Government by the 25<sup>th</sup> of the month immediately following the said calendar month :

XXX

XXX

XXX

Explanation – For the removal of doubt it is hereby clarified that in case the value of taxable service is received before providing the said service, service tax shall be paid on the value of service attributable to the relevant month or quarter, as the case may be.

**FINANCE ACT, 1994 FROM 13.05.2005 ONWARDS**

**Section 67** For the purpose of this Chapter, the value of any taxable service shall be the gross amount charged by the service provider for such service provided or to be provided by him.

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XXX

Explanation 3 For the removal of doubts, it is hereby declared that the gross amount charged for the taxable service shall include any amount received towards the taxable service before, during or after the provision of such service.

**FROM 16.6.2005 ONWARDS**

65 (105) “taxable service” means any service provided or to be provided-

XXX

XXX

XXX

(ZZC) to any person by a “Commercial training or Coaching centre” in relation to commercial training or coaching.

8. There is no dispute that from 1.7.2003 the appellants are liable to pay tax for rendering service of “commercial training or coaching centre.” The main contention of the learned Advocate is that the



appellants collected the amount prior to 1.7.2003 and, therefore, they are not liable to pay service tax on the services rendered by them after 1.7.2003. We are unable to accept the contention of the appellants. It is to be noted that service tax is a value added tax. Excise duty is a tax on value addition on goods, service tax is a tax on value addition by rendering services. So, the provision of Service tax should be read in this context. Section 66 is the charging section. Section 66 provides that the tax shall be levied and collected in such manner as may be prescribed. In terms of Clause (86) of Section 65, "prescribed" means prescribed by rules made under this Chapter. On close reading of Section 66, it is seen that levy of service tax is linked to collection in such manner as may be prescribed. The liability of payment of tax as created under Section 66 would be paid on the value of taxable service charged by the service provider for rendering such service by him. On reading of the above provisions harmoniously, we find that liability for payment of tax for rendering on "commercial training or coaching centre" was created with effect from 1.7.2003. The payment of tax is fastened on the service provider by Section 68. The procedure for payment of tax is prescribed under Rule 6 of Service Tax Rules. Rule 6 (1) provides payment of tax on the value of taxable services received during any calendar months. In the present case, the value of taxable services was received in advance prior to 1.7.2003. It does not conform to a common understanding that due to collection of value of taxable service in advance, the liability of tax would be wiped out. It is a mere incident. In this context, Board by



Circular No. 65/14/2003-ST dated 5.11.2003 clarified the procedure for payment of tax as under:-

“Thus, if a service provided is taxable, tax has to be paid on its value. Section 67 also clarifies value of service as the amount charged for the taxable service by the service provider. In other words, an amount becomes value of taxable service only when it has a nexus with the service provided. That is the reason why the expression used in Rule 6 is “value of taxable services” and not amount. The implication is that the tax has to be paid on the value of taxable services attributable to the service provided in a month/quarter as and when it is received. Thus, Rule 6 (1) cannot be read in isolation. When read alongwith the provisions of the Act, it becomes clear that where the value of taxable service has been received in advance for a service which became taxable subsequently service tax has to be paid on the value of service attributable to the relevant month/quarter which may be worked out on prorate basis.”

Hence, the appellants are liable to pay the tax on the value of taxable service collected by them prior to 1.7.2003 and the service rendered after 1.7.2003.

9. In view of the above discussion, we do not find any merit in the submissions of the learned Advocate for the reasons, as under:-

(i) The learned Advocate submits that contract entered and executed prior to 1.7.2003 and the fee is not refundable/transferable in any circumstance, the appellants agreed to provide coaching service prior to

1.7.2003. We find that the learned Jt. CDR rightly pointed out that Sovereign levy will not depend on the individual contracts to effectuate it. Levy of tax on 1.7.2003 has no nexus with contract of the appellants with their clients. In other words, the main test is that the appellant rendered the service after 1.7.2003 and they are liable to pay tax irrespective of fact collection taxable value was prior to 1.7.2003. The learned Advocate relied upon the case of Reliance Industries Ltd. (supra), wherein it has been held that when the service tax is introduced for the first time on any service, in respect of services already rendered on dates prior to introduction of service tax, even if payments are received on a subsequent date, no tax shall be liable. In fact, this proposition is in favour of the Revenue, as in the present case service tax is introduced for the first time on any service, in respect of amounts already collected on the date prior to introduction of service tax, and service was rendered on subsequent dates, tax shall be payable.

(ii) On perusal of various provisions of Act and Rules, as discussed above, we do not find any reason to treat service provider, who received value of taxable service in advance a separate 'class'. To our mind, it is apparent from the provisions that the payment of tax is linked with rendering of services irrespective of fact the amount was received in advance. The learned Advocate strongly relied upon interpretation of words "provided or to be provided" in the place of "rendered by him" and insertion of Explanation-3 under Section 67 of the Act. It is submitted by learned Advocate that from 16.6.2005 the words "or to be



provided” were inserted in Section 65(105) by which service tax was payable on whatever be collected for a service to be provided in future. He also relied upon Board’s Circular F. No. B1/6/2005-TRU dated 27.7.2005.

The Id. Joint C.D.R. submitted that explanation inserted subsequently “for the removal of doubt” only reinforces an already existing provision and does not introduce anything new. The Explanation would be retrospective or not, depending on the meaning of the provisions of Section and Rules. In the present case, the Explanation appears to be declaratory in nature, would have retrospective effect. The Id. Joint C.D.R. relied upon the decision of the Hon’ble Delhi High Court in the case of Pawan Kumar Vs. DRI 2007 (218) ELT 331 (Del.) and Binani Industries Ltd. (JT2007 (5) SC 311). The relevant portion in the case of Pawan Kumar (supra) is reproduced below:-

“(10) The presumption against retrospective operation is not applicable to declaratory statutes. CRAIES has explained the position regarding declaratory statutes in the following manner [Statute Law, 7<sup>th</sup> Edn., p 58]:-

“For modern purposes a declaratory Act may be defined as an Act to remove doubts existing as to the common law, or the meaning or effect of any statute. Such Acts are usually held to be retrospective. The usual reason for passing a declaratory Act is to set aside what Parliament deems to have been a judicial error, whether in the statement of the common law or in the interpretation of statutes. Usually, if not

invariably, such an Act contains a preamble, and also the word 'declared' as well as the word 'enacted'. (approved by the Supreme Court in *Central Bank of India vs. Their Workmen*, AIR 1960 SC 12)

(11) An explanatory Act is generally passed to supply an obvious omission or to clear up doubts as to the meaning of the previous Act. It is well settled that if a statute is curative or merely declaratory of the previous law, retrospective operation is generally intended. An amending Act may be purely clarificatory to clear a meaning of a provision of the principal Act which was already implicit."

In view of the above discussions, we find that subsequent amendment of provisions would not change the dimension of the appellant's case.

(iii) The contention of the learned Advocate is that only from 9.7.2004 by insertion of Explanation to Rule 6(1), it is provided for bifurcation of value. We have already discussed that levy and payment of tax are provided in the Act itself. So, the machinery provisions as provided in Rule 6 cannot defeat the object of the Act. In addition to that, Rule 6(1) as it stood during the relevant period provides for payment of tax on the value of taxable service received during any calendar month/quarter. In the present case, the value of taxable service was received prior to that period, which is mere incidental to Rule. The value of taxable service was received in advance and tax is not payable, in our view, it is a rigorous construction of machinery provisions. It is well settled that



charging sections are to be read strictly, machinery provisions would not be constructed in such rigorous manner.

(iv) The learned Advocate stated that in the taxing statute, the levy and collection provision constitute an integral code, if the machinery provisions fail, levy cannot be enforced. There is no quarrel on this proposition. But, in the instant case, there is machinery provision relating to collection of tax, in our view, which would be workable in the present situation.

(v) It is contended by the Id. Advocate that Board's Circular No.B.11/1 2002-TRU dated 1.8.2002 in respect of advance receipt of Membership fees for "club and fitness centers" would be applicable in the present case. In our view, the one time payment of Membership fee has no direct link to whether services are received or not received by the Member. This is entirely different from receipt of money in advance for services to be rendered in the following months. We find that the Board vide Circular No.F.No.B.1/6/2005-TRU dated 26.07.2005 clarified that a person is liable to pay the tax as soon as the consideration towards taxable service is received. In the present case, the appellant received the consideration in advance. So, we have already discussed that the person, who has received value of taxable service in advance would be treated, a person, who collects value of taxable service later. So, we do not find any substance in the submission of the Id. Advocate.

(vi) However, we find force in the submission of the Id. Advocate that the present case relates to interpretation of the provisions of law and

the imposition of penalty and extended period of limitation are not warranted.

10. In view of the above discussions, we upheld the orders on merit. We hold that in the facts and circumstances of the case, the extended period of limitation is not applicable. It is a case of interpretation of the provision of law and, therefore, penalties are not warranted and accordingly, it is set aside. We also direct that benefit of cum-tax in respect of the amount realized by them prior to 1.7.2003 would be extended.

All the appeals are disposed of in the above terms.

(Order pronounced on 16.12.2008)

(M. VEERAIYAN)  
MEMBER (TECHNICAL)

(P.K. DAS)  
MEMBER (JUDICIAL)

RK