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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/169 /2007 - CU[DB] Date 14/01/2009
ST/170/07

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

To :
NARAYANA IIT ACADEMY
SP-12 A, INDRA VIHAR, TALWANI,
KOTA(RAJASTHAN)
NARAYANA IIT ACADEMY Appellant
Vs
C.S.T.JAIPUR Respondent

I am directed to transmit herewith a certified copy of **Final order No.** ST/17-18/09 **CU[DB]** dated 07.01.09 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
   C.S.T.JAIPUR
   NCRB, STATUE CIRCLE, C-SCHEME, JAIPUR
2. Adv. / Consult : Praveen Agarwal, Adv
   5-456 Basement, GK Part – II Delhi - 48

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-III

Date of hearing/decision:7.1.2009

Service Tax Appeal Nos.169-170 of 2007

Arising out of the order in appeal No.1(GRM)ST/JPR-I/2006 dated 8.1.2007 passed by the Commissioner(Appeals), Customs & Central Excise, Jaipur.

For Approval and Signature:

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

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?	No
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		Respondent
Narayana IIT Academy	vs.	C.C.E., Jaipur

Appearance:

Shri Gulshan Sharma,Advocate for the appellant
Shri A.K. Madan, Authorized Departmental Representative (DR) for the Revenue

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

Final Order No. 97/17-18/09

Per P.K. Das:

Heard both sides and perused the record.

2. The relevant facts of the case, in brief, are that the appellants are registered under the Service Tax Authority in the category of computer training and coaching centre. The dispute relates to the amount collected by

the appellants for their two units from the students prior to 10.9.04 when the rate of tax was 8%. The rate of tax was enhanced to 10% and education cess 2% from 10.9.04. The appellant paid tax on the advance collection at the rate of 8% but the service was rendered after 10.9.04. The demand of tax was raised to its two branches of the appellant for the differential amount of tax at the rate of 2.2% for the service rendered after 10.9.04. The adjudicating authority confirmed the demand of tax and imposed penalties. The Commissioner (Appeals) upheld the adjudication order.

3. Learned Advocate submits that the appellants collected the amount before 10.9.04 and paid the tax thereon accordingly at the rate prevailed at the relevant time. So, the demand of tax is not sustainable. He also submits that the demand of tax is partly barred by limitation. He relied upon the decision of the Commissioner (Appeals) in the case of Krishna Coaching Institute reported in 2008 (11) STR 561 (Commr. Appl.). He further submits that they have paid duty and filed return, therefore, the penal provisions cannot be invoked.

4. Learned DR on behalf of the Revenue reiterates findings of the Commissioner (Appeals). He submits that by insertion of Explanation to Rule 6 of Service Tax Rules on 9.7.04, the appellants are liable to pay the tax at the rate prevailed at the time of rendering service. He also submits that the issue has already been settled by the Tribunal in the case of C.C.E., Allahabad vs. Krishna Coaching Institute vide Final Order No.ST/316/08 24.10.08.

5. After hearing both sides and on perusal of the record, we find that the learned Advocate relied upon the decision of the Commissioner (Appeals) in the case of Krishna Coaching Institute which was overruled by the Tribunal in final order No.ST/316/08 dated 24.20.08. It is decided by the Tribunal that the payment of tax is related to the period rendering service. In the present case, there is no dispute that the amount was collected in advance and the

service was rendered after 10.9.04.Therefore, the demand of tax at the rate of 10.2% as applicable during the material period is justified.

6. However, we find force in the submissions of the learned Advocate that there is no suppression of facts with intent to evade tax. We have noticed that the appellant paid tax at the rate of 8% and filed return. So, the penalties are not warranted.

7. In view of that, we uphold the demand of tax for the normal period of limitation. The demand of tax for the extended period of limitation and penalties are set aside. The adjudicating authority is directed to re-calculate the tax liability after extending cum-tax benefit within normal period of limitation.

8. Both the appeals are disposed of in the above terms.

(Dictated and pronounced in the open Court)

(M. Veeraiyan)
Member (Technical)

(P.K. Das)
Member (Judicial)

scd/