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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/491 /2007 - CU[DB] Date 27/01/2009

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

To :
M/S VIGYAN GURUKUL

C/O D.B. SINGH, 2-NA-2, DADABARI EXT., KOTA
(RAJASTHAN)

M/S VIGYAN GURUKUL — Appellant

Vs

C.C.E. JAIPUR I — Respondent

I am directed to transmit herewith a certified copy of **Final order No. ST/54 2009 CU[DB]** dated 15.01.09

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.C.E. JAIPUR I
   N.C.R.BUILDING, STATUE CIRCLE, "C" SCHEME, JAIPUR 302005.
2. Adv. / Consult
   MR.NARESH GUPTA
   351,SURYANAGAR,GOPAL PURA BYPASS JAIPUR
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)

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI PRINCIPAL BENCH, COURT NO. III

Service Tax Appeal No. 491of 2007

[Arising out of Order-in-Appeal No. 107(GRM) ST/JPR-I/2007 dated 15.5.2007 passed by 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)

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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? : NO

2. Whether it should be released under Rule 27: of the 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

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M/s. Vigyan Gurukul Appellant

Vs.

Commissioner of Central Excise Respondent
Jaipur

Appearance:

Mr. Naresh Gupta, Advocate for the Appellants
Mr. Sumit Kumar, DR for the Respondent

CORAM:

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

Date of Hearing /Decision: 15.1.2009

Final **ORDER NO . ST/54/09**

Per M. Veeraiyan (for the Bench):

This is an appeal against the order of Commissioner (Appeals) No. 107(GRM) ST/JPR-I/2007 dated 15.5.07.

2. Heard both sides.

3. Relevant fact, in brief, are as follows:

(a) The appellant, a partnership firm is rendering commercial coaching and training service. The officers visited the premises of the firm on 19.10.05 and recovered certain records, recorded statements of the partners and issued a show cause notice proposing demand of tax and imposition of penalties.

(b) A total demand of Rs.3,11,182/- has been confirmed as service tax on three grounds. The appellant has shown that a sum of Rs.17,13,627/- has been given as discount to some of the students whereas in certain private records (student-wise register), the same is not reflected as having been given to the students. The service tax amount demanded on this ground is Rs.1,85,899/-. The partners claimed to have given at their home independently tuitions and received an amount of Rs. 12,49,600/- but the same was also included in the gross amount received on commercial coaching and training by the Institute and a sum of Rs.1,25,479/- has been demanded.

There is also a demand of Rs.13,892/- relating to inclusion of sale value of application forms and prospectus. In addition penalties were also imposed.

4.1 Learned advocate for the appellants submits the search and the seizure operations were not in accordance with the law. However, he admits that they have participated in the adjudication proceedings and also proceedings before Commissioner (Appeals).

4.2 He submits that the student-wise register indicating higher amounts as realized was being maintained by clerks for memory purposes. It did not indicate the discounted amounts as a matter of strategy as other students are likely to demand similar discounts if they came to know of that. He submits that cash book represents the exact amount received from the students. The difference in amounts were due to actual discounts to the students based on their social status, intelligence, relationship etc. Therefore, demand of service tax on the higher amount based on the student-wise register is not warranted.

4.3 The partners of the institute are eminent persons in their respective ~~responsible~~ fields i.e. in physics, maths and chemistry. Some of the students were keen to have personal tuitions from the said partners. Accordingly the partners have given tuitions independently at their homes to some students and amounts so collected by them is Rs.12,49,600/- and the same should not be included in the taxable amount in the hands of commercial coaching and training centre. He also submits only in respect of Shri D.B. Singh amounts collected during 2004-2005 was subsequently taken into account of the institutes as the students were encouraged to join the institute. In other words, he is contesting the demand of tax on charges claimed to be for the tuitions conducted by Shri D.B. Singh in the year 2005-2006 and by the other partners during the period 2004-2005 and 2005-2006.

4.4 He also submits that the income tax authorities based on intimation sent by Central Excise authorities conducted enquiries with 10 of the students and two of the students did not respond and 8 of them confirmed having availed the discount and accordingly allowed the discounts and assessed the returns. He submits that the service tax department has not conducted such verification with the students. On the other hand, the affidavits submitted on behalf of some of the students ~~that they~~ have been ignored by the Central Excise authorities.

4.5 He submits that sale of application form and prospectus have nothing to directly do with the services of commercial coaching and training and demand of service tax is not warranted

4.6 He also submitted that it is a fit case where provisions of section 80 should be invoked.

5.1 Learned DR submits that the issue is not whether discount is admissible or not. Appellant have maintained parallel sets of records indicating different serial numbers. The student register indicated instalmentwise realisation particulars. The student-wise register was also admitted by the appellant as part of their accounting records. Therefore, the Asstt. Commissioner and the Commissioner (Appeals) are right in relying upon the said register to arrive at the gross amount realised by them. As affidavits submitted by the appellant is contrary to entries in their private records, they have been rightly disregarded.

5.2 As regards the private tuitions claimed to have been given by the partners, he submitted that this is a modus operandi adopted to suppress the extent of services rendered by the appellant. For the year 2004-2005, the said receipts have been brought in the records of their institutes. If the tuition was given in their individual capacities, there was no occasion to bring them into institute's records. No other evidence in the form of advertisement that individual partners were taking tuitions in private capacity has been produced. Therefore, the claim should not be accepted.

5.3 As regards, the sale of application forms and prospectus, no documents have been relied upon to indicate the genuineness of their claim.

6.1 We have carefully considered the submissions from both the sides. We find that the appellant has maintained detailed account of amounts realised date-wise, instalment-wise in the student-wise register. Under these circumstances, to claim that the said register was maintained by a clerk for memory purpose is not acceptable. The giving of different serial numbers in fees column in the student-wise register which was different from what was mentioned in the ledger books does reflect unreliability of the latter. Further, while relying on the student-wise register, it has been recorded by the Commissioner that the discounts allowed to the students mentioned in the student-wise register have been deducted from total receipts to ascertain the correct taxable value (i.e. the actual receipts from the students) for demanding service tax. From this, it is clear in the student-wise register also in certain cases, discounts have been mentioned and the said discounts has been taken into account in arriving at the service tax demand. Therefore, on merits, we hold that the student-wise register is reliable for demand of service tax. However, the Income-Tax authorities on the basis of verifications done in respect of 10 students, held that the actual discount has been passed on. It is not known whether the discount in respect of these students has been reflected in the student-wise register. If the same was already reflected in the student-wise register and benefit already been given then there is no need for revision of the demand of service tax on this fact. However, the original authority shall examine the details relating to these 10 students and revise the demand, if the discounts have not been taken into account while raising the demand.

6.2 As regards, the claim that the partners were independently giving tuitions, the same has not been corroborated with evidence like advertisement for undertaking such activities. The claim that the partners in the reputed institute, which is coaching students in large numbers, also gave tuitions independently in their individual capacity is not convincing. Further, whether the partners had agreed for such an arrangement has not been proved by the appellant. Therefore, this claim is also not acceptable. As regards, the claim relating to sale of application and pamphlets also, no evidence has been produced that the same amount relates to such activity.

7. Taking the entire facts and circumstances of the case into account, we uphold the demand of service tax along with interest except to the extent indicated above and we reduce the penalty imposed under section 76 to Rs.25,000/- (Rupees Twenty-five thousand only). However, we find justification in imposition of penalty under 78 and therefore do not interfere with the same.

8. The appeal is disposed off on the above terms.

(Dictated & Pronounced in the open Court)

(M. Veeraiyan)
Member(Technical)

(P.K.Das)
Member(Judicial)

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