

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI
PRINCIPAL BENCH – COURT NO. III**

**SERVICE TAX APPEAL NO. 54168 OF 2014
WITH
SERVICE TAX STAY NO. 54743 OF 2014**

[Arising out of Order-in-Original No. 14-17/Commissioner/Fbd/ST/2013 dated 28.03.2014 passed by the Commissioner of Central Excise and Customs, Delhi-IV]

M/s COMPUTER KIDS

F-35, Campus, South Extension-I,
New Delhi - 110049

...APPELLANT

Versus

**COMMISSIONER OF CENTRAL EXCISE,
& SERVICE TAX, DELHI-IV**

New CGO Complex, NH-IV, Faridabad

...RESPONDENT

APPEARANCE:

Ms. Prem Lata Bansal, Sr. Advocate, Ms. P.L. Bansal, Sr. Advocate and Shri Shivang Bansal, Advocate for the appellant.

Shri Shashank Yadav, Authorised Representative for the respondent

CORAM:

HON'BLE MS. BINU TAMTA, MEMBER (JUDICIAL)

HON'BLE MR. SANJIV SRIVASTAVA, MEMBER (TECHNICAL)

Date of Hearing: 21.07.2025

Date of Decision: 30.07.2025

FINAL ORDER NO. 51092/2025

BINU TAMTA:

1. The issue raised in the present appeal is whether the services provided by M/s. Computer Kids¹ involving training for courses affiliated with Sikkim Manipal University² and Manonmaniam Sundaranar University³, constitute taxable "Commercial Training or Coaching Centre Services" under Section 65(26) and 65(27) of the Finance Act, 1994⁴.

¹ The Appellant

² SMU

³ MSU

⁴ Finance Act

2. Before dealing with the aforesaid issue in the present context, we would like to refer to the decision of the High Court of Kerala in **Malappuram District Parallel College Association Vs. Union of India**⁵, where batch of writ petitions were filed by parallel colleges and their associations questioning the constitutional validity of levying of service tax treating parallel colleges as “Commercial Training or Coaching Centre” within the meaning of Section 65(27) of the Finance Act. The learned Single Judge held that parallel colleges/educational institutions conducting any course, which is a requirement to write examination to obtain degree or certificate awarded by any agency created by law is entitled to exemption under the definition Clause 65(27) of the Act and hence, they are not liable to pay any service tax. The observations of the High are quoted below:-

“4. The next question to be considered is whether the definition clause contained in Section 65(27) of the Act which makes the service rendered by the petitioners taxable under Section 66 (105)(zzc), is discriminatory and violative of Art. 14 of the Constitution of India. It is a settled position by series of decisions of the Supreme Court that taxing provisions should stand the test of constitutional validity with reference to Art. 14 of the Constitution of India also; see *Federation of Hotel And Restaurant v. Union of India*, (1989) 3 SCC 634 and *East India Tobacco Co. Ltd. v. State of A.P.*, AIR 1962 SC 1733. In order to appreciate the challenge against levy of service tax as discriminatory and violative of Art. 14 of the Constitution of India, the effect of levy has to be gone into. Counsel for the petitioners rightly contended that there is no provision in the Act prohibiting collection of service tax and service-provider is therefore entitled to collect service tax which in this case is from the students. Even if prohibition is introduced against collection of service, fee has to be increased without which the heavy burden of 10% tax cannot be paid is the case of the petitioners. In either case, the burden of service tax on education falls on the student community. It is in this context that the validity of the provision has to be considered with reference to Art. 14 of the Constitution of India. As already stated students studying in the parallel colleges are students who are entitled to write the University examinations as private students. **The curriculum prescribed for the examination and the degree certificate awarded to private students and students studying in regular colleges, whether aided or self-financed affiliated to University, are the same. Therefore there is no distinction between the two classes of students namely, the students studying in the colleges affiliated to Universities and private students who take coaching in parallel colleges to write the same examinations. While the students studying in affiliated colleges cannot be subjected to service tax along with tuition fees and other fees levied by the management of those colleges students, who are studying in parallel colleges will have to bear the service tax as an additional burden along with tuition fees and other charges collected by the management of parallel colleges. The main reason why many students cannot join regular colleges affiliated to Universities is economical. Further on account of limited number of seats available in the affiliated colleges, the less brilliant will have to look for coaching elsewhere and they end up in parallel colleges. It is also a well-known fact that in interior and remote areas of the**

⁵ 2006 (2) STR 321 (Ker.)

State, poor students even if eligible for admission in regular colleges cannot afford out-station-study and they naturally go to parallel colleges. In fact counsel for the petitioners pointed out that many brilliant students who could not afford to go to regular colleges after study in parallel colleges have secured high ranks in the examinations conducted by the Universities. Therefore in most cases, students landing in parallel colleges are the less fortunate ones who are compelled to join parallel colleges for economic reasons. It is worthwhile to note that the State Government after appreciating these realities have granted the same concession in bus fare granted to regular college students, to students in parallel colleges also. Financial benefits are provided to students from SC and ST community studying in parallel colleges also. Therefore, the State Government also treats the students in affiliated colleges and parallel colleges as part of the same class. **In any case there can be no distinction between students undergoing private study in the parallel colleges and those undergoing course study in the regular colleges, so long as the curriculum, the examinations written and the degrees obtained by them are one and the same.** So far as the teaching staff rendering coaching rendered is concerned, it is common knowledge that appointments in private colleges whether aided or self-financed are made at the choice of the managements and not by relative merits of the applicants. In fact counsel for the petitioners rightly pointed out that those who start parallel colleges are mostly those who by virtue of their weak financial position are not able to secure jobs in regular colleges and they employ equally unfortunate ones as members of teaching staff. In other words, there may not be any qualitative difference in the coaching rendered in parallel colleges and in regular colleges. Even though counsel for the respondents submitted that by virtue of notification fixing the threshold limit of Rs. 4 lakhs-turnover for attracting service tax liability only big institutions are liable. I do not think any distinction can be drawn among parallel colleges based on turnover, because, the burden of service tax on the parallel colleges will have to be borne by the students, and the validity of charging section has to be tested against Art. 14 of the Constitution with reference to its effect on the beneficiaries, that is the students. In view of the findings above, I find no distinction between students undergoing private study in parallel colleges and those undergoing study in affiliated colleges whether aided or self-financed in the same subjects for writing the same examinations. **Therefore levy of service tax for services rendered by parallel colleges which indirectly falls on the students, but by simultaneously providing exemption to regular affiliated colleges allowing the students therein study free of tax is patently discriminatory and violative of Art. 14 of the Constitution of India.** Though the service tax is in the Union list, since education happens to be in the concurrent list and considering the encouraging policy of the State Government to improve the educational opportunities of the students in the State, wherefrom large number of educated people migrate outside the State and outside the country seeking employment, the view of the State Govt. was called for by this Court. After referring the matter to the Cabinet, the Under Secretary to Government has filed an affidavit in Court wherein he has stated that though the State is helpless in regard to levy of service tax, the Government decided to bring it to the notice of the Central Government the difficulties experienced by parallel colleges in the matter of service tax. In the circumstances, it has to be assumed that the State Government is also in favour of exemption to the parallel colleges in the same way granted to regular colleges under the exemption in the definition clause. In view of the above findings, I hold that the impugned provisions of the Act authorising levy of service tax on parallel colleges are arbitrary and violative of Art. 14 of the Constitution of India. However, I make it clear that the judgment is rendered on the peculiar facts applicable to parallel colleges in Kerala and this is not to be treated as declaring the Section unconstitutional in so far as any other category of educational institution or training centre is concerned. The impugned proceedings in all the WP Cases are quashed and respondents are prohibited from demanding registration or service tax for the services rendered by petitioners, their members and other parallel colleges in Kerala.

W.Ps are allowed as above.” **(Emphasis laid)**

3. The learned Division Bench of the Kerala High Court in the case of **Commissioner of Central Excise, Service Tax & Customs Vs. M/s.**

Tandem Integrated Services ⁶ noted that the decision of the High Court in **Malappuram District** was not challenged by the Revenue and hence has become final. In the said case, the Adjudicating Authority had dropped the proceedings for levying the service tax under the category of “Commercial Training or Coaching Centre” and the appeal against the same was also dismissed by the Tribunal. The High Court confirmed the orders of the Tribunal in view of the decision in the case of **Malappuram District** holding that the assessee is imparting education to obtain recognized degree/diplomas from universities and the students are also being provided training to appear for competitive examinations, entrance test, etc. and the certificates, diplomas and degrees are issued by the university.

4. The principle enunciated by the High Court of Kerala has been followed by various Benches of the Tribunal:-

- (1) **JMC Educational Charitable Trust vs Commissioner of Central Excise Trichy** ⁷
- (2) **Chanakya Mandal Parivar vs Commissioner of Central Excise, Pune-III** ⁸
- (3) **M/s. Asian School of Media Studies Vs. CGST** ⁹
- (4) **M/s. Central I.T. College Vs. Central Excise & ST, Guwahati** ¹⁰

5. Learned Authorised Representative for the Department has also placed on record the order of the Supreme Court in **Union of India and Others Vs. Institute of Advance Studies** ¹¹, where batch of appeals were dismissed leaving the question of law open. The Apex Court had confirmed the impugned order of the High Court although observing that:-

⁶ 2019 (3) TMI 1440 (Kerala High Court)

⁷ (2011) (21) STR 421 (Tri-Chennai)

⁸ 2018 SCC Online CESTAT 3178

⁹ 2021 (11) TMI 514 –CESTAT-Allahabad

¹⁰ 2024 (10) TMI 569 –CESTAT-Kolkata

¹¹ Civil Appeal No.6451 of 2019 dated 02.11.2023

“ The relief specifically granted by the Division Bench is limited to those who are parties before the Court. Further clarification made by the Division Bench is that it was not making a universal declaration in respect of all institutions in whatever manner they are being conducted. Again, the Court has reiterated that the declaration granted under the impugned judgments will apply to the parties to the appeals who are the petitioners in the Writ Petitions and the Department is free to examine the cases of the parties who are not before the Court independently in accordance with law.

Hence, we decline to interfere with the impugned judgments, while reiterating what is observed by the Division Bench regarding liberty available to the appellants to consider the cases of other parties on their own merits accordance with law. The appeals are accordingly dismissed.”

6. In essence, the order of the Apex Court does not support the case of Revenue except to the limited effect to examine other cases on their merit. The subsequent decision of the Tribunal in the case of **Asian Schools of Media Studies (supra)** was not related to the State of Kerala, however, the issue considered was whether the appellants therein, who were conducting professional/vocational training courses were liable to pay service tax under the Head “Commercial Coaching or Training Services”. Noting the observations in the impugned order that the appellant therein did not have the authority to issue certificate/degree/diploma, it was observed that, “the students to whom education and training was imparted by the appellant have received degree/diploma/certificates issued by the respective universities. Further, it was held that the only requirement is, that the course being taught should be part of curriculum, leading to grant of degree/diploma recognized by the law”.

7. In the case of **M/s. Central I.T. College (supra)**, the Kolkata Bench of the Tribunal where the appellant, a learning centre was engaged in providing various educational programmes conducted by Sikkim Manipal

University (SMU) under Distance Educational Programmes as approved by UGC. Following the decision of the Tribunal in the case of **Academy for Professional Excellence Vs. Commissioner of CGST & Excise, Howrah**¹², where the issue again was whether the appellant operating as learning centre for SMU, Kolkata can be made liable to service tax, held that the services provided by the university is not the business activity and is not liable to service tax under "Commercial Training or Coaching Centre Services".

8. From the aforesaid decisions, it is clear that the Tribunal has uniformly followed the decision of the Kerala High Court in **Malappuram District** and have held that the parallel colleges/educational institutions imparting education for courses leading to the recognized certificates, diploma and degrees issued by the universities are not exigible to service tax under the category of "Commercial Training or Coaching Centre Services". Though the decision of the Kerala High Court had made it clear that the judgement is rendered on the peculiar facts applicable to parallel colleges of Kerala High Court and is not to be treated as declaring the section unconstitutional, however, the analogy and the principle laid down therein that there can be no distinction between the students studying in parallel colleges and those studying in regular colleges so long as the curriculum, the examination written and the degrees awarded are the same have been uniformly followed while considering the other cases.

9. We, therefore, are of the opinion that the decisions of the Tribunal passed in similar circumstances are binding on us and the present controversy needs to be decided in light thereof.

¹² 2020 (37) GSTL 334 (Tri-Kolkata)

10. Coming to the facts of the present case, the appellant a proprietorship firm is registered with the Service Tax Department under the category of “Commercial Training or Coaching Centre Services” operating under the trade name “Arena Animation” and is conducting training and coaching programmes in the field of Multi-media and Animation. The appellant is affiliated with Sikkim Manipal University (SMU), Sikkim and Manonmaniam Sundarnar University (MSU) (Tirunelveli). These universities offer degrees – SMU offers B.Sc in Multimedia and MSU offers B.Sc in Multimedia & Animation, which are delivered through structured course work facilitated at the appellant’s premises. Pursuing to an audit conducted by the office of Service Tax Department for the period 2005-06 to September, 2011, 4 show cause notices were issued to the appellant. The allegation in the show cause notice was that the services rendered by the appellant under the head “University Courses” were liable to service tax as per the provisions of Section 65(105)(zzc) read with Section 65(26) and Section 65(27) of the Act. On adjudication, the impugned order¹³ confirmed the demand observing that the appellant does not issue any degree/diploma or certificate recognized by law, itself but the same is issued by SMU and MSU and as such the benefit of Notification No.10/2003-ST dated 20.06.2003 and 33/2011-ST dated 01.05.2011, as amended is not available to the noticee. Hence, the present appeal has been filed.

11. We have heard Ms. Prem Lata Bansal, Sr. Advocate, Ms. P.L. Bansal, Sr. Advocate and Shri Shivang Bansal, Advocates for the appellant and Shri Shashank Yadva, learned Authorised Representative for the respondent.

¹³ Order-in-Original No.14-17/Commissioner/Fbd/ST/2013 dated 28.03.2014

12. The courses conducted by the appellant are fully recognized by the respective universities. That both the universities are recognized by their respective State Government i.e. SMU is a public partnership between Government of Sikkim & Manipal & MSU is established by Government of Tamil Nadu. The students who are admitted in the Institute of the appellant undergo a regular course of study and practical training at the Institute of the appellant. Thereafter, examinations are conducted under the supervision of the University and evaluation of the examination is done by the University. After the results are declared, statement of marks is forwarded by the University to the appellant which is then forwarded to the students. After successful completion of the courses by the students, the degrees are awarded by the University.

13. We find that the observations made in the impugned order that the appellant did not issue any degree/diploma/certificate recognized by law and the same is issued by SMU and MSU and therefore, the benefit of the notification is not available to the appellant is contrary to the earlier decisions of the Tribunal as discussed above. In the case of **Tandem Integrated Services**, the Revenue had raised similar plea that the respondent therein is not a regular college which grants certificate, diplomas or degree for any educational qualification recognized by law and would therefore, not come within the exemption under subsection (27) of Section 65 of the Finance Act, 2003. The learned Division Bench did not agree with the submissions of the Revenue in view of para 2.2.3 of CBEC Circular dated 20.06.2003 clarifying the position and also in view of the decision in **Mallapuram District**. The observations of the Division Bench are as under:-

"The assessee herein is also imparting education to obtain recognised degrees/diplomas from Universities and that apart the students are also being provided training to appear for competitive examinations, entrance tests, etc. **It is not necessary that the respondent-firm should issue a certificate, diploma or degree.** The students given coaching by the appellant are issued with certificates, diplomas and degrees, as issued by the Universities; identical to regular colleges and parallel colleges also. The students are being prepared for courses and are imparted training to appear for competitive examinations as well. The decision of this Court in Malappuram District Parallel College Association (supra) would squarely apply to the respondent-firm, since they are imparting coaching for courses leading to recognised certificates, diplomas and degrees issued by lawfully constituted academic bodies. Hence when such institutes also carry on training schedules to prepare students for competitive exams, categorised as "commercial coaching"; as per the clarification issued by the CBCE, they stand exempted."

14. The appellant is in the nature of a parallel college and the courses offered and conducted at their centre is recognised by law leading to the issuance of certificates, degrees and diplomas which are awarded by the universities to the students. Following the decisions referred to, the appellant cannot be said to be engaged in providing "Commercial Training or Coaching Service". The impugned order is, therefore, bad and needs to be set aside.

15. The learned Counsel for the appellant has referred to the Circular No.59/8/2003-ST dated 20.06.2003, which clarified that exemption from service tax shall be available to such institutes which imparts education for obtaining recognised degrees etc. and also imparts training for various entrance test. Para 2.2.3 of the Circular is quoted below:-

"2.2.3 Certain doubts have been raised in case of commercial coaching and training. In this regard, the following is clarified,--

Whether service tax is leviable on institutes providing commercial coaching in addition to recognized degree courses: Some institutes like colleges, apart from imparting education for obtaining recognized

degrees/diploma/certificates , also impart training for competitive examinations, various entrance tests, etc. It is certified that by definition, such institutes or establishments, which issue a certificate, diploma or degree recognized by law, are outside the purview of "Commercial Training or Coaching Institute". Thus, even if such institutes or establishments provide training for competitive examinations, etc. such services rendered would be outside the scope of service tax."

16. Similarly, vide Notification No. 10/2003 dated 20.06.2003, Central Government, in the public interest has exempted the taxable services provided by a commercial training or coaching centre, in relation to commercial training or coaching, which form an essential part of a course or curriculum of any other institute or establishment, leading to issuance of any certificate or diploma or degree or educational qualification recognized by law for the time being in force, to any person, from the whole of the service tax leviable thereon under Section 66(2) of the Act. This Notification had come into force w.e.f. 01.07.2003.

17. For the sake of completeness we may refer to the subsequent changes in the legal provision. The Government modified the definition of "Commercial Training or Coaching Centre" by removing the exclusion clause, w.e.f. 1.5.2011, however, vide Notification No.33/2011-ST dated 25.04.2011, the Central Government exempted any coaching or training leading to grant of a certificate, diploma or degree or any educational qualification which is recognized by any law. Thus, the position remained the same and the coaching & training centres were not amenable to service tax.

18. Thus in terms of the circular read with the notification the appellant is eligible for exemption as they are imparting education to the students in

respect of which SMU, Sikkim & MSU, Tirunelveli issues the degrees which are recognized by law.

19. The decision of the Tribunal in **M/s Soft Dot Hi-Tech Educational and Training Institute versus Commissioner Service Tax, Delhi, – III¹⁴**, relied on by the Revenue is based on the facts of that case where the students were directly paying charges to the appellant therein. Moreover, none of the decisions of the High Court and the Tribunal were referred to in the said case.

20. The show cause notices have also made allegation that the appellant is providing coaching for the multimedia professional courses and claiming exemption on the amount charged for books purchased from open market and supplied by them to the students pursuing multimedia professional courses. The fee charged by the appellant from the students is inclusive of value of books, and the same is not reflected separately in the bills raised to the students. The appellant has placed reliance on Notification No.12/2003-ST dated 20.06.2003, which provides that the value of goods and material sold by the service provider to the recipient of service, while providing service shall not be liable to service tax subject to the condition that there is documentary proof specifically indicating the value of the said goods and materials sold. Thus, the intention is to immune goods and materials from levy of service tax.

21. The learned Counsel has taken a preliminary objection that the impugned order is unsustainable as it is beyond the scope of the show cause notice and also that extended period cannot be invoked. Since the issue on

¹⁴ 2025 (6) TMI 1013

merits has been decided in favour of the appellant, we do not find it necessary to go into these questions.

22. In view of our discussion above, we hold that the impugned order needs to be set aside and is hereby quashed. The appeal is, accordingly allowed. The miscellaneous application filed by the appellant also stands disposed of.

[Order pronounced on 30th July, 2025]

(BINU TAMTA)
MEMBER (JUDICIAL)

(SANJIV SRIVASTAVA)
MEMBER (TECHNICAL)