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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/437/2012-CU[DB]

Dated: **05/09/2012**

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

C.S.T.-Delhi
17-
B,I.A.E.A.House,M.G.Road,I.P.Estate,New
Delhi,110002

C.S.T.-Delhi (Appellant)

VS

Alliance Francaise De Delhi (Respondent)

I am directed to transmit herewith a certified copy of Final Order No. **ST/A/560/2012-CU[DB]** dated **29/08/2012** passed by the Tribunal under section **01(5) of the Finance Act, 1994 relating to Service Tax Act, 1994.**

Assistant Registrar
CUSTOMS Appeal Branch

Copy To,
1. Respondent
Alliance Francaise De Delhi
72, Lodhi Road Estate., New Delhi-
110003

2. Advocate(s) / Consultant(s):
Mr. A.K.Batra, CA
C/O Respondent
3. C.D.R
4. Bar Association, CESTAT, New Delhi

5. Director Publications, Customs, Excise. I.P. Estate, New Delhi

6. M/s Centax Publications Pvt. Ltd., 1512-B, Bhishm Pitamah Marg, Opp. ICICI Bank of Defence Colony, New Delhi-3

7. Company Law Institute of India Pvt. Ltd., No.2 (old no.36), Vaithyaram Street, T. Nagar, Chennai-17

8. Taxmann Allied Service Pvt. Ltd., 59/32, New Rohtak Road, New Delhi-110005

9. Easy Service Tax Online Dot Com Pvt. Ltd., 407A, Iscon Mall, Above Star India Bazar, Satellite Road, Ahmedabad-15

10. LAWCRUX Advisors Pvt. Ltd., LAW House, 1-8, Sector-10, Faridabad 121003 (Haryana)

11. TaxIndiaOnline.com Pvt. Ltd., Unit No. 1, 2nd Floor, Vasant Arcade, Nelson Mandela Road, Vasant Kunj, New Delhi - 110070

12. Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Ameer Pet, Hyderabad – 500038

13. Office Copy

14. Gaurd File

Assistant Registrar
CUSTOMS Appeal Branch

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

Service Tax Appeal No.437 of 2012

[Arising out of Order-In-Original No.41/ST/PKJ/CCE/ADJ/2011, dated 29.12.11 issued by CST, Delhi]

For approval and signature:
Hon'ble Ms. Archana Wadhwa, Judicial Member
Hon'ble Mr. Mathew John, Technical Member

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?	

CST, Delhi — Appellant
Vs.
Alliance Francaise De Delhi — Respondents

Coram: Hon'ble Ms. Archana Wadhwa, Judicial Member
Hon'ble Mr. Mathew John, Technical Member

Appearance:
Shri. N. Pathak, DR for the Appellants
Shri A.K. Batra, Adv. for the Respondent

Date of Hearing/decision : 29.08.2012

Final **ORDER NO .ST/A/560/12-Cus**

Per Ms. Archana Wadhwa:

Being aggrieved with that part of the impugned order of Commissioner vide which he has had dropped the demand of Service Tax raised under the category of commercial coaching and training services provided by the respondent, by invoking the longer period of limitation, revenue has filed the present appeal.

After hearing both side duly represented by Shri N. Pathak learned D.R. for the revenue and Sh. A.K. Batra learned advocate for the respondent, we find that the "Commissioner" had dropped the demand by observing as under:-

> *42.1 I find merit in the submission made by the party. It is seen that the matter was not free from doubt and the judicial rulings were in favour of the stand taken by them. It is seen the explanation added by the Finance Act, with retrospective effect has clarified the legal position that the training or coaching is required to be of commercial nature and the institution may not be commercial in nature. However, it is seen that at the relevant time when the Service Tax was not paid by the party, the malafide intention cannot be attributed to them as the Tribunal's decisions were in their favour and the explanation was not available to clarify the position. I also find force in the contention that the retrospective amendment is also subject to the provision of Section 73 (1). In the absence of malafide intention to evade payment of Service Tax, the extended period of limitation cannot be invoked. The Hon'ble Supreme Court has clearly held that the extended period of limitation cannot be invoked simply because of a retrospective amendment. The Supreme Court in para 33 of the decision in the case of J.K. SPINNING AND WEAVING MILLS LTD. AND ANOTHER have observed as under:-*
>
> *"There is no provision in the Act or in the Rules enabling the Excise authorities to make any demand beyond the periods mentioned in Section 11A of the Act on the ground of the accrual of cause of action.*

The question that is really involved is whether in view of Section 51 of the Finance Act, 1982, Section 11A should be ignored or not. In our view Section 51 does not, in any manner, affect the provision of Section 11A of the Act. In the absence of any specific provision overriding Section 11A, it will be consistent with rules of harmonious construction to hold that section 51 of the Finance Act, 1982 insofar as it gives retrospective effect to the amendments made to Rules 9 and 49of the rules, is subject to the provision of Section 11A. 25.3. Thus it is clear in the absence of any wilful mis-statement of suppression of facts etc. That the extended period in term of proviso to Section 73(1) cannot be made applicable even though the explanation has been added with retrospective effect.

42.2 The provision of Section 73 of the Finance Act, 1994 are parimateria with the provisions of Section 11 A of the CEA, 1944. Accordingly, I hold that proviso to 73(1) is not applicable in this case and the extended period of limitation is not applicable for demanding duty on commercial training and coaching centre services."

As against the above findings of Commissioner, the revenue has again raised the issue from the angle of merit of the case. The revenue has not advanced any reasons to rebut the finding of the adjucating authority on the issue of limitation.Admittedly there was confusion or doubt during the relevant period. Moreover, the Tribunal's judgment was in favour of the assessee . Subsequent amendment made under the law with retrospective effect cannot be considered relevant for attributing suppression or mis-statement to the assessee. We find no reason to interfere in the impugned order of Commissioner. Revenues appeal is accordingly rejected.

(Pronounced in the open Court)

(Archana Wadhwa)
Member(Judicial)

(Mathew John)
Member(Technical)

Jyoti