

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH- COURT NO. I

Service Tax Appeal No. 57371 of 2013

(Arising out of Order-in-Original No. 36/ST/COMMR/DM/RTK/2012-13 dated 05.02.2013 passed by the Commissioner, Rohtak)

M/s. MCM Worldwide Private Limited
9, Sainik Farms, Lane C-3, Khanpur
New Delhi - 110062

....Appellant

Versus

Commissioner, Central Excise
Commissionerate, SCO 6, Sector - 1,
Rohtak (Haryana)

....Respondent

WITH

Service Tax Appeal No. 50907 of 2014

(Arising out of Order-in-Original No. 58/ST/COMMR/DM/RTK/2013-14 dated 31.10.2013 passed by the Commissioner, Rohtak)

M/s. MCM Worldwide Private Limited
9, Sainik Farms, Lane C-3, Khanpur
New Delhi - 110062

....Appellant

Versus

Commissioner, Central Excise
Commissionerate, SCO 6, Sector - 1,
Rohtak (Haryana)

....Respondent

APPEARANCE:

Shri T. Chakraphani, Consultant and Shri Anil Kumar, Advocates for the Appellant

Shri Aejaz Ahmad, Authorised Representative of the Department

CORAM:

HON'BLE MR. JUSTICE DILIP GUPTA, PRESIDENT
HON'BLE MR. P.V. SUBBA RAO, MEMBER (TECHNICAL)

Date of Hearing: 29.07.2025
Date of Decision: 07.01.2026

FINAL ORDER NO's. 50015-50016/2026

JUSTICE DILIP GUPTA:

Service Tax Appeal No. 57371 of 2013 has been filed by M/s. MCM Worldwide Private Limited, New Delhi¹ to assail the order dated 05.02.2013 passed by the Commissioner confirming the demand of service tax for the period 2006-07 to 2010-11 with interest under section 75 of the Finance Act 1994² and penalty under sections 77 and 78 of the Finance Act.

2. **Service Tax Appeal No. 50907 of 2014** has been filed by the appellant to assail the order dated 31.10.2013 passed by the Commissioner confirming the demand of service tax for the period 2011-2012 with interest under section 75 of the Finance Act and penalties under sections 77 and 78 of the Finance Act.

3. It needs to be noted that Service Tax Appeal No. 57371 of 2013 adjudicates the show cause notice dated 22.10.2011 while Service Tax Appeal No. 50907 of 2014 adjudicates the show cause notice dated 15.10.2012. The allegations raised in both the show cause notices are identical and the two impugned orders have dealt with the issues in same manner. These two appeal are, accordingly, been decided by this order.

4. The appellant claims to be a trader engaged in sale and purchase of machinery and its parts. The appellant claims that it also provided training services and consulting engineer services. However, it did not pay service tax. According to the department, the appellant provided commercial training or coaching services as defined under section 65(26) of the Finance Act and made taxable under section 65(105)(zzc)

1. the appellant
2. the Finance Act

of the Finance Act; consulting engineer services as defined under section 65(31) of the Finance Act and made taxable under section 65(105)(g) of the Finance Act; and renting of immovable property service as defined under section 65(90a) of the Finance Act and made taxable under section 65(105)(zzzz) of the Finance Act but the appellant did not pay service tax for these three services.

5. Accordingly, the two show cause notices were issued to the appellant and the demand have been confirmed under three heads in the following manner:

**"18. SERVICE TAX ON COMMERCIAL TRAINING
OR COACHING SERVICES:**

(a) The party submitted that the company was engaged not only in skill up- gradation of construction workers and training of workmen under agreement(s) with C.I.D.C. as alleged in the impugned SCN but also they were imparting vocational training under Skill Development Initiative Scheme which were based on practical training experience which helped trainee(s) directly to develop expertise in a particular group of techniques and make them ready for skilled occupation; that the imparting of the vocational training was the intent and basis of the agreements between State Governments & IGNOU and CIDC on one hand and between CIDC and the assessee company on the other hand; that the State Governments supported the vocational training program through the Principals at ITIs for provision of classrooms / workshops; that the CIDC in association with IGNOU was required to provide the party with competency standards, performance level to be achieved, syllabi, training and testing procedures as approved for each trade by CIDC/ IGNOU; that CIDC would ensure that all those were designed to meet the requirements of construction industry; that

The courses offered by them under agreement(s) with CIDC through its ITI were not general courses of improving communication skills, personality development, general grooming but technical courses imparted in Industrial Technical Institutes as were applicable to construction industry only and they met the conditions for exemption from service tax stipulated by Notfn. No. 24/2004-ST dated 10.09.2004.

(b) The party further submitted that they imparted training as 'Associate Training or Coaching Centre' of C.I.D.C. and all the charges for such training, testing and certification were collected by CIDC and the same were shared with them as per agreement(s) from time to time and as such entitled for exemption from payment of service tax under Notfn. No. 10/2003-ST dated 20.06.2003.

(c) The party further submitted that trainings provided by them were Modular Employable Skill Courses under Skill Development Initiative Scheme and thus were exempted from payment of service tax under Notfn. No. 23/2010-ST dated 29.04.2010.

19. I find that the contention of the party, that they were providing vocational training as an associate of C.I.D.C. and their training were in relation to Modular Employable Skill Courses, is not sustainable in as much as that as per their letter dated 24.08.2011 the party submitted that they provided commercial coaching/training of workmen and supervisions under an agreement with CIDC, an agency recognized by the Government for testing and certification of skill of labour; that the fees were charged / collected from the students / trainees by the CIDC and the same were reimbursed to them and this fact had also been confirmed by the Director of the party in his statement dated 17.10.2011. Thus the party is not entitled to exemption from service tax under Notfn. No. 24/2004-ST dated 10.09.2004, as the training does not enable the trainee to

seek employment or undertake self employment directly after such training as the party imparted training for skill up-gradation of construction workers and training of workmen and supervisors and up-gradation of competence of construction managers from which it is implied that the party enhances the qualities of skills among the skilled / already trained workers who are already employed.

20. I also find that the party is not entitled to exemption under Notfn No. 10/2003-ST dated 20.06.2003 as exemption of taxable services was available in respect of 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, but this was not the case of the party. The party was also not entitled to exemption under Notification No. 23/2010-ST dated 29.04.2010, as exemption of taxable services was available under this Notification in respect of services provided in relation to Modular Employable Skill courses approved by the National Council of Vocational Training by a Vocational Training Provider registered under the Skill Development Initiative Scheme with the Directorate General of Employment and Training, Ministry of Labour and Employment, Government of India but this was not the case of the party."

(emphasis supplied)

6. In respect of consultancy services, the Commissioner recorded the following findings:

"21. SERVICE TAX ON SCIENTIFIC OR TECHNICAL CONSULTANCY SERVICES The party agreement between the CIDC and Oil & Natural Gas Commission (ONGC) for development of cost index, creating and updation of cost data base and costing software and the

same assignment was awarded to the party by CIDC whereby 90% of the fee received by CIDC from ONGC was paid to the party which was shown by them under the head 'Consultancy Fees'; that the CIDC charged full service tax from ONGC on the gross value of services including the share in fees paid to the party and paid the service tax on the gross amount received from ONGC, that since the CIDC had paid the full service tax on the gross amount, they had the understanding that they were not required to pay any further service tax, as otherwise it would amount to double taxation; that they were not aware of applicability of Cenvat Credit Rules, 2004 on these invoices; and that there was no willful attempt on part of the party to evade payment of service tax, no mis-statement, collusion or fraud by them as the service tax had already been paid by CIDC on the services provided by them and availed by ONGC.

22. I find that the contention of the party that they were not liable to service tax on the Consultancy Services provided by them to ONGC as the ONGC was charged the full service tax by CIDC and which had been paid / deposited with the Department, is not sustainable in as much as that the services have been provided by them and as such they were liable to pay service tax on the same. They could have opted for Cenvat facility under Cenvat Credit Rules, 2004 and would have availed Cenvat credit of service tax paid by CIDC. To say that they were not aware of the procedure of Cenvat is also not tenable as ignorance of law is no excuse. As such, I am of the opinion that the party is liable to pay service tax on the consultancy fees received from CIDC under Sec 68 of the Financial Act, 1994 read with Rule 6(i) of the Service Tax Rule, 1994 and is liable to recovery from them under Section 73(1) of the Finance Act, 1994."

(emphasis supplied)

7. In respect of renting of immovable property service, the Commissioner recorded the following findings:

"23. NON-PAYMENT OF SERVICE TAX ON RENTING OF IMMOVABLE PROPERTY SERVICES:-

The party submitted that the party was not the owner of the property against which the impugned rent had been received as the said property was under rent from third person and any income received on renting of property not owned by the party did not amount to renting and thus no service tax was leviable on the same.

24. I find that the above contention of the party is not acceptable in as much as that in what capacity; they received the rent if they were not the owner of the said property. As the party received the impugned rent from CIDC in respect of subletting the spare space of the premises to CIDC, they were liable to pay service tax on the amount of rent received. As the party had not provided only the renting of immovable property services but also provided other services, as mentioned in the foregoing paras, they were not entitled to basic exemption/exemption to small scale service providers.

25. In view of the above, I hold that the party is liable to pay service tax on the renting of immovable property service under section 68 of the Finance Act, 1994 read with rule 6(i) of the Service Tax Rules, 1994 and is liable to be recovered from them under Section 73(1) of the Finance Act, 1994."

(emphasis supplied)

8. Shri T. Chakraphani, learned consultant for the appellant assisted by Shri Anil Kumar, learned counsel made the following submissions:

- (i) The services were provided by the appellant as trading to construction workers were vocational training and exemption were available from service tax by Notification No. 24/2004-ST dated 10.09.2004³;

3. Notification dated 10.09.2004

- (ii) The appellant also imparted training services which form an essential part of the course Construction Industry Development Council⁴ leading to issuance of any certificate or diploma recognized by Law (IGNOU) and hence the services were exempt under Notification No. 09/2003-ST dated 20.06.2003⁵. To support of this contention learned counsel placed reliance upon the impugned order dated 22.08.2014 regarding waiver of pre-deposit in this appeal as also the decision dated 29.11.2017 of the Commissioner (Appeals) in Appeal No. 46 of 2017 filed by the appellant in relation to the demand for the subsequent period from 2012-13 and 2013-14;
- (iii) The consultancy services were rendered by the appellant pursuant to an agreement dated 23.08.2006 entered into between CIDC and Oil and Natural Gas Corporation⁶ for development of cost index, creating and updation of cost data base and costing software. CIDC charged full service tax from ONGC on the gross amount under its contract and, therefore, the appellant believed that it was not required to pay any further service tax. In this connection, learned consultant also placed reliance upon the Interim Order dated 22.08.2014 passed in this appeal for waiver of the pre-deposit; and
- (iv) The renting of immovable property service charges are essentially part of cost sharing system between

4. CIDC
5. Notification dated 20.06.2003
6. ONGC

the appellant and CIDC in using the premises and not towards rent. Thus, no service tax is liable to be paid. In this connection, learned consultant also placed reliance upon the Interim Order dated 22.08.2014 passed in this appeal in the matter relating to pre-deposit.

9. Shri Aejaaz Ahmad, learned authorised representative appearing of the department, however, supported the impugned order and submitted that it does not call for any interference in this appeal. In support of his contentions, learned authorised representative placed reliance upon the decision of a Larger Bench of this Tribunal in **Sri Chaitanya Educational Committee vs. Commr. of Cus., C. Ex. & S.T., Guntur**⁷ and the decision of the Larger Bench of the Tribunal in **Commissioner of Service Tax vs. M/s. Melange Developers Pvt. Ltd**⁸.

10. The submissions advanced by the learned consultant for the appellant and the learned authorised representative appearing for the department have been considered.

11. The first issue that arises for consideration is regarding levy of service tax commercial training or coaching.

12. Section 65(26) of the Act, which was inserted w.e.f. 1 July, 2003, defines 'commercial training or coaching' as follows:

"65(26) 'Commercial Training or Coaching' means any training or coaching provided by commercial training or coaching centre;"

13. 'Commercial training or coaching centre' has been defined in Section 65(27) of the Act as follows :

7. **2019 (29) G.S.T.L. 712 (Tri.-LB)**

8. **Service Tax Appeal No. 50399 of 2014 decided on 23.05.2019**

"65(27) 'Commercial training or coaching centre' means any institute or establishment providing commercial training or coaching for imparting skill or knowledge or lessons on any subject or field other than the sports, with or without issuance of a certificate and includes coaching or tutorial classes but does not include preschool coaching and training centre or any institute or establishment which issues any certificate or diploma or degree or any educational qualification recognised by law for the time being in force;"

14. 'Taxable Service' under Section 65(105)(zzc) has been defined to mean 'any service provided or to be provided to any person, by a commercial training or coaching centre in relation to commercial training or coaching'. The Explanation was inserted by Finance Act, 2010 with retrospective effect from 1 July, 2003. It is reproduced below:

"65(105)(zzc) to any person, by a commercial training or coaching centre in relation to commercial training or coaching."

Explanation. - For the removal of doubts, it is hereby declared that the expression "commercial training or coaching centre" occurring in this sub-clause and in clauses (26), (27) and (90a) shall include any centre or institute, by whatever name called, where training or coaching is imparted for consideration, whether or not such centre or institute is registered as a trust or a society or similar other organisation under any law for the time being in force and carrying on its activity with or without profit motive and the expression "commercial training or coaching" shall be construed accordingly."

15. It is, therefore, clear from the aforesaid definitions that 'commercial training or coaching' means any training or coaching provided by a commercial training or coaching centre. A 'commercial training or coaching centre' has been defined to mean, any institute or

establishment providing commercial training or coaching for imparting skill or knowledge or lessons on any subject or field with or without issuance of a certificate and includes coaching or tutorial classes, but does not include any institute or establishment which issues any certificate or diploma or degree or any educational qualification recognized by law for the time being in force.

16. According to the appellant it was not only engaged in skill up-gradation of construction workers and training of workmen under the agreement with CIDC but was also imparting vocational training under Skill Development Initiative Scheme which was based on practical training/experience which helped the trainees directly to develop expertise in a particular group of techniques and make them ready for skilled occupation. Pursuant to agreements between the State Governments and IGNOU and CIDC on one hand and between CIDC and the appellant on the other hand, the courses offered the technical courses imparted in Industrial Technical Institutes and, therefore, would be exempt from service tax under the Notification dated 10.09.2004.

17. It is seen that the appellant provided commercial coaching/training of workmen under an agreement with CIDC which is an agency recognized by the government for testing and certification of skill of labour. The fees were collected by the CIDC and reimbursed to the appellant.

18. The Notification dated 10.09.2004, on which reliance has been placed by the appellant, is reproduced below:

"Government, being satisfied that it is necessary in the public interest so to do, hereby exempts the taxable services provided in relation to commercial training or coaching, by, -

- (a) a vocational training institute; or
- (b) a recreational training institute,

to any person, from the whole of the service tax leviable thereon under section 66 of the said Act.

Explanation. - For the purposes of this notification, -

(i) "vocational training institute" means a commercial training or coaching centre which provides vocational training or coaching that impart skills to enable the trainee to seek employment or undertake self-employment, directly after such training or coaching;

(ii) "recreational training institute" means a commercial training or coaching centre which provides training or coaching relating to recreational activities such as dance, singing, martial arts or hobbies."

19. The training imparted by the appellant does not enable the trainees to seek employment or undertake self employment directly after training since the appellant imparted training for skill up-gradation of existing construction workers and training of existing workmen and supervisors. The appellant, therefore, only enhanced the qualities of skills among the workers who were already employed.

20. The appellant also claimed benefit of Notifications dated 20.06.2003 and 29.04.2010.

21. The Notification dated 29.04.2010 is reproduced below:

"... exempts the taxable service referred to in sub-clause (zzc) of clause (105) of section 65 of the Finance Act, when provided in relation to Modular Employable Skill courses approved by the National Council of Vocational Training, by a Vocational Training Provider registered under the 'Skill Development Initiative Scheme with the Directorate General of Employment and Training, Ministry of Labour and Employment,

Government of India, from the whole of the service tax
leviable thereon under Section 66 of the Finance Act.”

22. The appellant does not satisfy the conditions set out in this Notification because a perusal of the Memorandum of understanding dated 02.03.2006 between CIDC and the appellant does not specify the courses to be undertaken for provision of services by the appellant. The appellant also did not provide any certificate/document that it was registered with the Directorate General of Employment and Training under the Skill Development Initiative Scheme.

23. The appellant is also not entitled to the benefit of Notification dated 20.06.2003 as the appellant is not an Associate Training or Coaching Center of CIDC.

24. The findings recorded by the Commissioner on this issue, therefore, do not suffer for any infirmity.

25. The next issue that arises for consideration is regarding service tax on consultancy services provided by the appellant. In this connection it needs to be noted that consultancy services were provided pursuant to an agreement between CIDC and ONGC. CIDC, however, assigned this work to the appellant and 90% to this fees received by CIDC from ONGC was paid to the appellant which were shown under the head 'consultancy fees'. CIDC may have charged full service tax from ONGC, but that would not absolve the appellant from paying service tax on the amount received from CIDC towards consultancy.

26. There is, therefore, no error in the finding recorded by the Commissioner on this issue.

27. The next issue that arises for consideration is payment of service tax on renting of immovable property services.

28. The contention of the learned counsel for the appellant is that it had taken premises on rent for their own use, but later on as half portion became surplus it sub-let this portion to CIDC for commercial purposes. The submissions advanced is that the appellant was not the owner of the property and so any income received from renting of property would not amount to renting and, therefore, no service tax would be leviable.

29. It is not possible to accept this contention advanced by the learned counsel for the appellant. It is not material whether the appellant was the owner of the property or not. So long as it received rent towards letting of property to CIDC, it was liable to pay service tax on the amount of rent received. There is, therefore, no error in the order passed by the Commissioner.

30. As the appellant had not paid service tax, the Commissioner was justified in ordering it to be recovered with interest under section 75 of the Finance Act.

31. The appellant has placed reliance upon the Interim Order dated 22.08.2014 in this appeal. This order was passed on the application filed for waiver of pre-deposit. The finding recorded in the said order are prima facie in nature and are not binding at the time a final decision is to be taken in the appeal. Likewise, the order dated 30.11.2017 in Appeal No. 46 of 2017 on which reliance has been placed refers to the Interim Order passed by the Tribunal regarding the waiver of pre-deposit. Reliance on the decision of the Tribunal in **CST vs. Ashu Exports**⁹ in this decision does not help the appellant as in the instant case it has been found as a fact the training provided by the appellant

9. 2014 (34) STR 161 (Del.)

does not help the trainees to seek employment or have self-employment.

32. The next issue that arises for consideration is regarding imposition of penalty upon the appellant under sections 77 and 78 of the Finance Act.

33. Section 77 provides for imposition of penalty for contravention of Rules and provisions of Act, for which no penalty is specified elsewhere.

34. Section 78 of the Finance Act deals with penalty for failure to pay service tax for reasons of fraud or collusion or wilful mis-statement.

35. Section 80 of the Finance Act, as stood prior to 14.05.2015, provides that notwithstanding anything contained in section 77, no penalty shall be imposable on the assessee for any failure referred to in the said provisions, if the assessee proves that there was reasonable cause for the said failure.

36. In the instance case, the appellant had contended that it was under a bonafide belief that it was not liable to pay service tax because of the Exemption Notifications. The appellant also specifically referred to the Notifications. The appellant also claimed that it was not liable to pay service tax on the renting of immovable property.

37. While dealing with the imposition of penalty, the Commissioner has merely observed that as the appellant has contravened the provisions of the Act, it would have to pay penalty under section 77 of the Finance Act. The contentions advanced by the appellant have not been considered.

38. The appellant would, therefore, be clearly entitled to the benefit of section 80 of the Finance Act and no penalty can be imposed upon the appellant under section 77 of the Finance Act.

39. Penalty under section 78 of the Finance Act can be imposed for failure to pay service tax for reasons of fraud or collusion or wilful mis-statement or suppression of fact.

40. The appellant contended that for bonafide reasons it did not pay the service tax. The Commissioner has merely observed that the appellant deliberately suppressed facts of providing taxable services with wilful intent evade to payment of service tax. No reasons have been assigned by the Commissioner for coming to this conclusion. Penalty under section 78 of the Finance Act, therefore, cannot be sustained.

41. Thus, for all the reasons stated above, the order dated 05.02.2013 passed by the Commissioner that has been challenged in Service Tax Appeal No. 57371 of 2013 and the order dated 31.10.2013 passed by the Commissioner that has been challenged in Service Tax Appeal No. 50907 of 2014 are maintained except to the extent that the penalties that have been imposed upon the appellant under sections 77 and 78 of the Finance Act are set aside. The Appeals are, accordingly, allowed in part to the extent indicated above.

(Order Pronounced on **07.01.2026**)

(JUSTICE DILIP GUPTA)
PRESIDENT

(P.V. SUBBA RAO)
MEMBER (TECHNICAL)