CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI
PRINCIPAL BENCH - COURT NO. IV

Service Tax Appeal No.51677 of 2021

[Arising out of Order-in-Appeal No.DDN/EXCUS/000/APPL/17/2021-22 dated 25.06.2021 passed by the Commissioner, CGST (Appeals), Dehradun.]

Shri Rahul Mishra,
18A, Subhash Road, **....APPELLANT**
Dehradun, Uttarakhand-248 001.

Versus

Commissioner of CGST & Central Excise,
E-Block, Nehru Colony,
Dehradun, Uttarakhand-248 001. **.....RESPONDENT**

Appearance:
Present for the Appellant : Shri Rajesh Gupta, Chartered Accountant
Present for the Respondent: Shri Shashank Yadav, Authorised Representative.

CORAM:
HON'BLE MS. BINU TAMTA, MEMBER (JUDICIAL)
HON'BLE MR. P. ANJANI KUMAR, MEMBER (TECHNICAL)

Final Order No. 50849/2026

Date of Hearing/Decision:05.05.2026

BINU TAMTA:

The Commissioner (Appeals) in the impugned order[1] had noted that the crux of the matter relates to the contention of the appellant that they have essentially provided study material to various students and much of the income shown corresponding to the three financial years i.e. 2014-15, 2015-16 and 2016-17 is on account of sale of study material, which is chargeable to service tax. The impugned order rejected the claim of the appellant.

[1] Order-in-Appeal No. DDN/EXCUS/000/APPL/17/2021-22 dated 25.06.2021

2. From the order-in-original passed by the Adjudicating Authority, we find that the appellant had not submitted any reply to the show cause notice and even after granting personal hearings on 01.07.2020, 11.08.2020 and 04.09.2020, the appellant did not appear and contested the matter. The Adjudicating Authority proceeded in terms of the Circular No.1053/02/2017-CX dated 10.03.2017 that after three opportunities of personal hearings having been granted, decided the issue *ex-parte*. The Adjudicating Authority failed to consider that the personal hearings were fixed when the country was affected by the pandemic of COVID-19. Similarly, before the Commissioner (Appeals), the opportunity of personal hearings was granted on 07.04.2021, 22.04.2021, 29.04.2021 and 12.05.2021 and lastly on 08.06.2021, when the appellant was represented by Shri Rajesh Gupta, Chartered Accountant virtually. That all the dates fixed for personal hearing were also during the second phase of COVID-19 and, therefore, it appears that when on the last date of hearing, learned Chartered Accountant appeared, he presented some of the documents. However, the Commissioner (Appeals) observed as under:-

> "In this backdrop, the claim of the appellant that they have supplied study material lacks credibility. This is compounded by the fact that even at this stage, when more than 8 years have elapsed, they have managed to submit only 2 sample receipts out of 92 alleged for the year 2014-15, 9 sample receipts of the alleged sale of study material to 362 students for the financial year of 2015-16 and only 16 samples receipts out of the alleged 475 students in respect of financial year 2017-18. Therefore, I find that this assertion is not credible and cannot be taken into cognizance giving the evidence already on record pertaining to nature of services discharged by them and the income so received by them."

3. In view of the peculiar circumstances, it appears that the appellant is entitled to procure the requisite documents in support of his case that the sale of study material was not leviable to service tax for reconsideration. We are of the opinion that the appellant should be offered sufficient opportunity to present his case before the Adjudicating Authority and, therefore, the present matter needs to be remanded.

4. The impugned order is, therefore, set aside. The appeal is, accordingly allowed by way of remand to the Adjudicating Authority.

[Operative portion of the order already pronounced in open court]

(Binu Tamta)
Member (Judicial)

(P. Anjani Kumar)
Member (Technical)

Ckp.