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

Service Tax Appeal No. ST/1063 & 1026/2011-ST[DB]
[Arising out of Order-In-Appeal No. 25/2011 dated 30.03.2011 passed by CCE & ST-Jaipur-I]

For approval and signature:
Hon'ble Mr. S.K. Mohanty, Member (Judicial)
Hon'ble Mr. B. Ravichandran, Member (Technical)

M/s. Daswani Classes Ltd. ...Appellant
C.C.E. Jaipur-I

Vs.

C.C.E. Jaipur-I …Respondent
M/s. Daswani Classes Ltd.

Appearance:
Mr. Manish Gaur (Advocate) for the Appellant
Mrs. Neha Garg, DR for the Respondent

CORAM:
Hon'ble Mr. S.K. Mohanty, Member (Judicial)
Hon'ble Mr. B. Ravichandran, Member (Technical)

Date of Hearing.02.01.2017
Date of Decision.12.01.2017

<u>Final Order No. 50306-50307 /2017</u>

<u>Per B. Ravichandran</u>:

These two appeals are against a common impugned order dated 30.03.2011 issued by Commissioner of Central Excise and Service Tax, Jaipur-I. The impugned order confirmed service tax liability of Rs. 48,55,554/- on the appellant assessee and imposed penalty of equivalent amount under Section 78 and further penalties under Section 76 and 77 of Finance Act, 1994. The appellant assessee filed appeal against the said order. The Revenue also filed appeal against the finding of the Commissioner with reference to non-inclusion of certain income in the taxable value.

2. The brief facts of the case are that the appellant assessee is providing commercial coaching for pre-medical test and engineering entrance. The services rendered were taxed under the category of commercial training or coaching service. For the period April, 2004 to September, 2008, the service tax liability on the appellant assessee under the above mentioned taxable category was sought to be recovered on the differential amount between the income shown in ST-3 Returns and shown in their balance-sheet. The impugned order allowed detection towards supply of blazer, bags, uniforms and other receipts. However, no deduction was allowed in respect of study materials. The department filed appeal against allowing deduction from the value of taxable service towards supply of blazer, bags, uniforms etc. in terms of Notification No. 12/2003-ST. The appellant assessee filed appeal against the finding of not allowing deduction in respect of study materials and liability on Franchise Service.

3. We have heard both the sides and perused the records.

4. The Ld. Counsel for the appellant/ assessee submitted that the appellant/ assessee are providing commercial coaching or training service in terms of composite contract with the participant, and as such, no service tax can be levied. The tax liability can only be on service. In terms of Section 65(105)(zzc), the activities taxed in only service. Since, the appellant assessee provided service along with supply of material, they are not liable to service

tax. Reliance was placed on the decision of Hon'ble Supreme Court in the case of Larsen and Toubro Ltd. 215 (39) STR 913 (SC). The Ld. Counsel further submitted that when the Rules did not provide any mechanism to determine the value of service in such composite activities, then no tax liability can arise under Section 66. Without prejudice to the above arguments, it was submitted that the appellant assessee is rightly eligible for concession under Notification 12/2003-ST dated 20.03.2003. Though, the appellant assessee did not have documents evidencing sale of goods during the course of providing service, the service tax levy cannot extent to sale of goods.

5. Ld. Counsel also contested the impugned order on the question of time bar. The service tax demand made under franchisee service is also contested on the ground that the appellant assessee discontinued the franchisee business and there is no receipt of earned income during the period 2007-2008.

6. The Ld. AR submitted that the impugned order is incorrect in allowing the deduction in the value of taxable service with reference to supply of blazer, uniform, bags etc. It is submitted that there is no evidence or documentary proof to establish that the appellant sold these items during the course of providing service to the recipient of service. The exemption of Notification 12/2003-ST is available only when the materials were sold by the service provider to the recipient of service. There is a clear condition that documentary proof specifically indicating the value of said goods and materials should be available. In the absence of

such documentary proof, the abatement allowed by the original authority is improper.

7. We have considered the rival submissions as mentioned above.

8. We take up the question of eligibility of the appellant/ assessee for the exemption under Notification 12/2003-ST.

9. The said Notification exempts service tax on the value of goods and materials sold by the service provider to the service recipient, subject to condition that there is documentary proof specifically indicating the value of the said goods and materials.

10. The dispute in the present case is with reference to the documentary proof to claim the said exemption. The Ld. Commissioner recorded that audited balance-sheet, ledger accounts and documents related to actual cost attributable to blazer, uniform etc. can be considered for extending the benefit under the said Notification. We find that such reasoning is beyond the scope of the condition mentioned in the Notification. The wordings of the Notification are plain and simple. Value of goods and materials sold by the service provider to the service recipient is exempted. The Condition is production of documentary proof. We note that the cost of procurement of any of these items, even if they are evidenced by supporting documents, is of no relevance as the exemption is only for goods and materials sold by the appellant assessee to the service recipient. No such evidence of sale has been produced. Further, such sale should be from the appellant/ assessee to the recipient of service. Procurement of

various goods and materials and their cost being reflected in the balance-sheet is not a sufficient documentary proof to fulfill the condition of the Notification. We find that the reasoning adopted by the original authority is legally untenable.

11. The same ratio applies to the deduction claimed by the appellant assessee towards supply of study materials. Admittedly the appellant assessee could not produce any documentary evidence regarding sale of any study material to the recipient of service. Even on repeated query from the Bench they could not produce such document except for evidences of expenses of printing etc. captured in their balance-sheet and some photo copies of issue register indicating supply of some sheets of paper to various individuals. No other documentary evidence could be produced by the appellant/ assessee to support their claim for exemption under Notification 12/2003-ST. As already noted the wordings and the conditions of the Notification are very clear and there is no ambiguity on this count. We note that in the absence of documentary proof of sale of goods or materials, the exemption claim cannot be admitted.

12. We note that the appellant assessee relied on the decision of Hon'ble Supreme Court in Larsen and Toubro (supra) to contest the service tax liability itself on the services of commercial coaching or training rendered by them. It is their claim that the contract is of composite nature and hence, cannot be taxed under Finance Act, 1984. We find that the said submission is legally unsustainable. First of all, the appellant did not establish that there is any composite service contract between them and recipient of service.

There is nothing in the record to indicate that there is an agreement for providing service and supply of goods. Various individuals approach the appellant/ assessee for commercial training or coaching. Admittedly, the appellant assessee is engaged in providing such taxable service to various participants. During the provision of such service, certain study materials etc, were used. Legislative competence to tax such services which may involve certain supply of materials has been examined by Hon'ble Delhi High Court in Federation of Hotels and Restaurants Association of India 2016 (44) STR 3 (Del.). The Hon'ble Delhi High Court also examined machinery provision for the levy and determination of service tax on the service portion as clearly spelt out in the Rules. In the present case Notification 12/2003-ST envisages that in case of sale of goods or materials by the service provider to the service recipient, the value of such goods shall be exempted. For this, the sale should be evidenced. As noted above in the present case there is no evidence submitted by the appellant assessee with reference to existence of any composite contract for service or sale of any goods/ materials during the provision of such service. In view of above findings, we find that he claim of the appellant/ assessee for exemption under Notification 12/2003-ST is not sustainable. The findings in the impugned order extending the said benefit is set aside.

13. Regarding the service tax of franchisee service, we note that the issue has been examined in detail by the original authority. On careful analysis of the data submitted by the appellant as well as the evidences collected during investigation, the impugned order

arrived at the differential service tax to be paid on this account by the appellant assessee. We find no reason to interfere with the said finding. Regarding the demand for extended period, the Ld. Counsel for the appellant assessee claimed bonafide belief for exclusion of cost of goods supplied by them. We find that the original authority recorded his reasons for extended period and for imposition of penalty under Section 78. It was recorded that the periodical statutory returns filed by the appellant assessee did not disclose full taxable value. Though the appellant was registered with the department and were discharging the service tax they chose to pay service tax only on part of the value received by them. The claim for bonafide belief is not tenable in the facts and circumstances of the present case. Accordingly, we find no merits in the plea of the appellant assessee on this account.

14. In view of the above discussion and findings, appeal filed by the Revenue is allowed and the appeal filed by the appellant/ assessee is dismissed.

(Pronounced in the open court on 12.01.2017)

(**B. Ravichandran**)
Member(Technical)

(**S. K. Mohanty**)
Member (Judicial)

Neha