IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI, PRINCIPAL BENCH NEW DELHI

Date of Hearing/Decision:23.01.2017

Appeal No.ST/1355/2010 (DB)

[Arising out of Order-in-Appeal No.291/S.Tax/DII/2010 dated 6.7.2010 passed by the Commissioner (Appeals), Central Excise,Delhi-II]

M/s.Fittjee Limited ..Appellant

Vs.

CST, New Delhi …Respondent

Appearance:

Rep. by Shri Praveen Sharma, Advocate for the appellant.
Rep. by Shri Sanjay Jain, DR for the respondent.

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

Final Order No.50512/2017

Per B. Ravichandran:

The appeal is against order dated 6.7.2010 of Commissioner (Appeals), Delhi-II. The appellants are engaged in providing coaching to the candidates to prepare for entrance examinations for admission in professional courses. They were registered with the Department for paying service tax under the category of "Commercial Training and Coaching Services". The dispute in the present appeal relates to their tax liability in respect of the amount collected towards supply of study material/kit, from the candidates. The appellant's claim for exemption under Notification No.12/03-ST dated 20.06.2003 was not allowed by the lower authorities on the ground that they have provided a composite service of coaching and the study materials are essential for rendering service. Such supply of study materials is merely incidental to the primary work of imparting coaching.

2. Ld. Counsel for the appellant submitted that the appellants were supplying study materials to the participants of the coaching courses under specific bills and they have all documentary evidence to support their claim for exemption under notification no.12/03-ST. He relied on the certain decided cases to reiterate that the study materials sold are eligible for exemption in terms of the said notification.

3. Ld. AR reiterated the findings in the impugned order.

4. We have heard both the sides and perused the appeal records.

5. The appellants are providing taxable service under the category of "Commercial Coaching and Training" and were discharging service tax on the same. The dispute in the present case is relating to abatement in terms of notification no.12/03-ST towards the amount received on supply of study materials, books/kit. We have perused some of the documents submitted by the appellant to support their claim that they have separate receipt for supply of books and study materials indicating the price clearly. We have also noted that they have sold such study materials /books to non-registered students. Their prospectus advertising for various coaching programmes clearly mentions the price of books and study materials. In such factual scenario, we find that the appellant's claim for exemption under notification no.12/03-ST cannot be rejected. Ld. Counsel for the appellant confirmed that there is no question of their availing any cenvat credit on such books and study materials as there is no tax paid on any of them. We find the impugned order denying the benefit of notification no.12/03-ST is not legally sustainable. In this regard, we also rely on the decisions of the Tribunal in the cases of **Cerebral Learning Solutions Pvt. Ltd. – 2013 (32) STR 379 (T-D), Chate Coaching Classes Pvt. Ltd. – 2013 (29) STR 138 (T-M), Pinnacle -**

2011 (24) STR 453 (T-D) and Mastermind Classes Pvt. Ltd. vide Final Order No.53685/2015 dated 19.11.2015.

6. In view of the above analysis, we set aside the impugned order and allow the appeal.

[operative portion already pronounced in open court]

(S.K. Mohanty)
Member (Judicial)

(B. Ravichandran)
Member (Technical)

Ckp.