CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No.2, R. K. Puram, New Delhi, Court No. 1

Date of hearing/decision: 07.02.2017

**Service Tax Appeal No. 3772 of 2012**

(Arising out of order in appeal No. 169/S.Tax/D-II/2012 dated 11.09.2012 passed by the Commissioner (Appeals) Central Excise, New Delhi).

M/s FIITJEE Limited Appellant

Vs.

CST, New Delhi Respondent

Appearance:

Sh. Praveen Sharma, Advocate for the appellant
Dr. Neha Garg, AR for the Respondent

Coram:

Hon'ble Mr. Justice (Dr.) Satish Chandra, President
Hon'ble Mr. Ashok K. Arya, Member (Technical)

Final Order No. 50798/ 2017

Per: **Justice (Dr.) Satish Chandra**:

The present appeal is filed against the order in appeal No. 169/S.Tax/D-II/2012 dated 11.09.2012 passed by the Commissioner (Appeals) Central Excise, New Delhi.

2. The appellants are engaged in providing coaching to the candidates to prepare for entrance examinations towards 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 but was not allowed by the lower authorities on the ground that they have provided a composite service of coaching and the study materials which are essential part for the service rendered. Finally, the department brought the said service under the service tax net. Being aggrieved, the present appeal is filed by the appellant.

3. With this background, we heard Sh. Praveen Sharma, ld. Advocate for the appellant and Dr. Neha Garg, ld. AR for the revenue.

4. After hearing both sides and on perusal of record, it appears that the identical issue has come up in the assessee's own case before the Tribunal in ST/Appeal No. 1355 of 2010 (Final Order No. 50512/2017 dated 23.01.2017) where it was observed that:

> "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 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".*

5. By following our order (supra), we find no merit in the impugned order, so the same is hereby set-aside.

6. In the result, the appeal filed by the appellant is allowed with consequential relief.

(Dictated and pronounced in the open Court).

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| (Ashok K. Arya)<br>Member (Technical) | (Justice (Dr.) Satish Chandra)<br>President |

Pant