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

COURT-I

Date of Hearing/Decision : **16.02.2017**

Appeal No. ST/939/2009 & ST/55870/2013 -CU(DB)

[Arising out of the Order in Appeal No. OIA- 11-12/JM/2009 dated 01.09.2009 and Order-in-Original No. 189-191-ST-PKJ-CLE-ADJ-2012 dated 06.11.2012 passed by Commissioner (Appeals) / Commissioner Service Tax, Delhi]

Career Launcher India Limited … Appellants

Vs.

Commissioner of Service Tax, Delhi … Respondent

Appearance:

Rep. by - Shri Narendrafor the appellant
Rep. by - Shri Ranjan Khanna, DR for the appellant/Department

Coram: Hon'ble Mr. Justice (Dr.) Satish Chandra, President
Hon'ble Mr. V. Padmanabhan, Member (Technical)

Final Order No. 51948-51949/2017-DB

Per Justice Dr. Satish Chandra

The present appeal is filed against Order-in-Appeal No. 11-12/JM/2009 dated 01.09.2009 and Order-in-Original No. 189-191-ST-PKJ-CLE-ADJ-2012 dated 06.11.2012. In both the appeals, the issue is identical so, both the appeals are disposed by this common order for the sake of convenience.

2. The brief facts of the case are that, during the period under consideration (i.e. July 2003 to Sept. 2010), the appellant was engaged in rendering Commercial Training or Coaching Services, Management Consultant Services and Event Management services and is duly registered with the department for service tax. The appellant offers a number of programs to the students and provide them

coaching. The appellant also sells study material to the students. On the amount charged for coaching, the appellant has been paying service tax but on the amount charged for sale of study material, the appellant is not paying the service tax. The department had brought this amount, relating to sale of study material, under the clutches of service tax. Being aggrieved, the appellant has filed the present appeal.

3. With this background, we have heard Shri Narendra Singhvi, ld. Advocate and Shri Sanjay Jain, ld. DR for the parties.

4. On perusal of the record, it appears that identical issue has come up before the Tribunal in the case of *Fitjee Limited vs. Commissioner of Service Tax, New Delhi.* The Tribunal in Final Order No. 50512/2017 dated 23.01.2017, 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 the cases of Cerebral Learning Solutions Pvt. Limited – 2013 (32) STR 379 (Tri. Del.), Chate Coaching Classes Pvt. Ltd – 2013 (29) STR 138 (Tri. Mum.), Pinnacle – 2011 (24) STR 453 (Tri. Del.) and Mastermind Classes Pvt. Limited vide Final Order No. 53685/2015 dated 19.11.2015"

5. By following the ratio laid down by the Tribunal (supra), we find no merit in impugned order and the same is set-aside.

6. In the result, the appeals filed by the appellant is allowed.

[Order dictated & pronounced in open court]

(**V. Padmanabhan**)
Member (Technical)

(**Justice Dr. Satish Chandra**)
President

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