

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
WEST BLOCK NO.2, R.K. PURAM, NEW DELHI-110066
BENCH-DB

COURT –III

Service Tax Appeal No.ST/331, 401 & 402/2011-ST [DB]

[Arising out of Order-in-Original No.36-38-ST-PKJ-CCE-ADJ-2010 dated 30.11.2010 passed by the Commissioner (Adjudication), Central Excise, New Delhi]

Service Tax Appeal No.ST/336/2012-ST [DB]

[Arising out of Order-in-Original No.37-ST-PKJ-CCE-ADJ-2011 dated 30.11.2011 passed by the Commissioner (Adjudication), Central Excise, New Delhi]

Service Tax Appeal No.ST/ 2630 & 2631/2012-ST [DB]

[Arising out of Order-in-Original No.90 & 91/GB/2012 dated 23/05/2012 passed by the Commissioner (Adjudication), Central Excise, New Delhi]

Frankfinn Aviation Services Pvt. Ltd.

...Appellant

Vs.

C.S.T., New Delhi

... Respondent

Service Tax Appeal No.ST/350/2011-ST [DB]

[Arising out of Order-in-Original No.36-38-ST-PKJ-CCE-ADJ-2010 dated 30.11.2010 passed by the Commissioner (Adjudication), Central Excise, New Delhi]

Service Tax Appeal No.ST/ 2653/2012-ST [DB]

[Arising out of Order-in-Original No.90 & 91/GB/2012 dated 23/05/2012 passed by the Commissioner (Adjudication), Central Excise, New Delhi]

C.S.T., New Delhi

...Appellant

Vs.

Frankfinn Aviation Services Pvt. Ltd.

... Respondent

Present for the Appellant : Mr.N.Venkataraman, Sr.Advocate
Mr. Pravesh Khandelwal, Advocate

Present for the Respondent: Mr. Ranjan Khanna, D.R. &
Mr. Sanjay Jain, D.R.

Coram: HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)

HON'BLE MR. B.RAVICHANDRAN, MEMBER (TECHNICAL)

Date of Hearing : 07/03/2017

Date of Pronouncement:20/03/2017

FINAL ORDER NO. 52442-52449/2017

PER: B.RAVICHANDRAN

This bunch of 8 appeals are taken up together as they are dealing with common dispute involving the same appellant - assessee. 6 appeals are by the appellant - assessee and 2 are by the Department.

2. Briefly stated, the facts of the case are that the appellant assessee are engaged in providing training courses in aviation, hospitality and travel management to various participants.

They collect course fee for imparting such training. On completion of the training, a certificate of Diploma is issued in the name of M/s. Edexcel Ltd., U.K., an accrediting agent. The dispute in the present case relates to the liability of appellant – assessee to pay service tax on the consideration received from participants for imparting training. The tax liability was sought to be confirmed under the category of “commercial training or coaching services”.

3. The second issue is relating to appellants – assessee’s liability to pay service tax on payment made to Edexcel, U.K., under the tax category of “franchisee service”. The third issue is relating to inclusion of various reimbursable expenses in the tax value under the category of franchisee services.

4. The original authority, upon adjudication of the demands issued to the appellant – assessee, held that they are providing taxable service under the category of commercial coaching or training and they are not exempted in terms of Notification No. 24/2004-ST dated 10.09.2004 available to vocational training institute. It was held that the course offered by the appellant – assessee did not impart skills to enable the participants to engage in self-employment. On the second issue, the adjudicating authority held that the appellant – assessee has been granted representational right by M/s.Edexcel, U.K., and the services provided by M/s.Edexcel is liable to be taxed under “franchisee service”. The appellant - assessee being recipient of such service from abroad is liable to pay service tax on reverse charge basis. On the third issue, it was held that the re-imbursement received by the appellant-

assessee under various heads of expenditure, namely advertisement and publicity, training expenses including books and study materials, uniform to students and staff, printing and stationary charges etc. are in relation to franchisee service provided by the appellant – assessee. The service tax liability should be discharged on the gross value and no amount can be excluded from the same. Reliance was placed on the provisions of Rule 5 (1) of Service Tax (Determination of Value) Rules, 2006 read with Section 67 of the Finance Act, 1994. The demand, however, was restricted to the normal period holding that there is no suppression of fact on the part of the appellant - assessee. The appellant - assessee preferred appeals against these findings on service tax liability.

5. The Revenue's appeals are against the subsequent adjudication order wherein the demand against the appellant assessee under the category of commercial coaching and training was dropped by the original authority. The second appeal of the Revenue is against dropping of demand for extended period and for non-imposition of penalty under Section 78, on the appellant – assessee.

6. The Id. Sr. Advocate appearing on behalf of the appellant- assessee submitted mainly on the following ground:-

- (a) The appellant - assessee are engaged in providing vocational training to various participants in the field of aviation, hospitality and travel management. The courses offered by the appellant – assessee are of specialized nature. They result in the participant's gaining the employment in specialized field of activities

like aviation, hospitality, industry or travel management. The original authority in the initial adjudication order erred in holding the participants do not have acquire skills for self-employment and hence the training given by them is not exempt in terms of Notification No.24/04. In subsequent proceedings, the correct legal position has been appreciated and the demand against the appellant – assessee has been dropped.

(b) The agreement with M/s. Edexcel, U.K. did not confer any representational right to the appellant- assessee to sell or manufacture goods or to provide service or undertake any process identified with franchisor. M/s. Edexcel is an internationally recognized accreditation body. They have entered into an agreement with M/s. Edexcel and in terms of the same they maintained certain standards of training. On completion of the course, a Diploma certificate is issued by Edexcel. There is no representational right conferred on the appellant – assessee in conducting such coaching or training in India.

(c) The appellant - assessee have appointed various franchisees throughout the country for imparting similar training in terms of the agreement entered into with these franchisees. Various expenditure borne by the appellant - assessee are to be reimbursed by the franchisees. These amounts are reimbursed on actual basis with no mark-up. It is also submitted that reliance placed on Rule 5 (1) of Service Tax Valuation Rules is no more sustainable as the said rule has been held to be

ultra vires of the substantive provisions of Finance Act, 1994, by the Hon'ble Delhi High Court in the Intercontinental Consultants and Technocrats Pvt. Ltd. – 2012 – TIOL- 966 - HC –Delhi- ST.

7. On the appeal filed by the Revenue, the Id. Counsel submitted that there is no reason to allege suppression of facts etc. against the appellant – assessee for sustaining extended period demand. The original authority has recorded elaborately on various correspondences between the appellant – assessee and the jurisdictional officers and also specific reasons for accepting the contention of the assessee – appellant. The Id. Counsel submitted that in the second decision (impugned order dated 23.05.2012) the Commissioner correctly examined the applicability of exemption under Notification 24/04 to the appellant - assessee and dropped the demand.

8. The Id. A.R. submitted that the appellant assessee did not impart any training which will enable the participant to have gainful self-employment. In order to consider the appellant - assessee as “Vocational Training Institute” it is necessary that the trainees should have opportunity to seek employment or to undertake self-employment. In the present case the courses offered by the appellant – assessee do not provide the opportunity to the trainees to undertake “self-employment’ directly after the training or coaching. These courses provide opportunities of employment only. Regarding payments made to Edexcel, U.K., the Id. A.R. submitted that the appellant – assessee is conducting courses, which result in

issue of Diploma by Edexcel. The standard of course and the required skill levels are all pre-determined in terms of the agreement entered into by the assessee - appellant with Edexcel. The appellant - assessee is using the name of Edexcel and the original authority correctly held them as representing Edexcel in India. On reimbursable expenditure the Id. AR submitted that the expenses incurred by the appellant - assessee is very much includible in the tax value for the purpose of tax liability under franchisee service. These are essential expenditure to provide the service.

9. We have heard both the sides and perused the appeal records. We take up the first issue regarding liability of the appellant - assessee to pay service tax under the category of "commercial coaching and training". Admittedly the appellant- assessee is providing commercial coaching and training. The dispute is relating to their eligibility to the exemption under Notification 24/2004-ST. The said Notification provides exemption to taxable services provided in relation to commercial training or coaching by a 'Vocational Training Institute'.

"(i) "Vocational training institute" means a commercial training or coaching centre which provides vocational training or coaching that impart skills to enable the trainee to seek employment or undertake self-employment, directly after such training or coaching;"

10. In the first proceedings (impugned order-in-original No.36-38/ST dated 30.11.2010), the Original authority held that as the courses offered by the appellant - assessee do not

provide for skills to the trainees to engage themselves in self employment. As such, the exemption under the said Notification will not be available. We find that the said reasoning is without any legal basis and is totally fallacious. As seen from the terms of the Notification, it is clear that the training or coaching should impart skills to enable the trainee to seek employment or undertake self-employment. Admittedly, in the present case there is no dispute regarding the ability of the trainees to seek employment in the fields in which they have obtained training as per the courses offered by the appellant – assessee. The original authority concluded that since the courses did not enable the trainee to undertake self employment, the Institute cannot be called “Vocational Training Institute”. First of all, we are not able to appreciate as to how such conclusion was drawn by the original authority. There is no basis to give a summary conclusion that the trainees on completion of such courses cannot undertake self-employment. Even otherwise, it is not necessary to have both the criteria of the employment and self-employment to be fulfilled in this regard. We note that in the later order, the original authority concluded that the appellant - assessee are eligible for exemption under the said Notification. It was recorded as below:-

15.3 Various courses offered by M/s FASPL, in respect of aviation, hospitality and travel management, help in developing the skills of a trainee to enable him/her to seek direct employment or engage in self-employment in a specific area of travel and hospitality industry. For example after completing the course for airhostesses, a trainee could seek employment in that specific field of the airlines industry. I further find that the training programs under aviation, hospitality and travel management improve the chances of a trainee to get employment in that specific industry over a generalist (say a common graduates); and also impart skills to go for self-employment, on account of skills acquired by the trainees. Such training course is commonly known and understood as a vocational course in trade. For availing of the exemption granted under the notification, a 'commercial training or coaching institute has to satisfy the condition, as per the definition of Vocational Training Institute given in the above said notification and accordingly should provide training to impart skills which enables the trainees to seek 'employment', or to undertake 'self-employment'. In the present case, after going through the documents available on record, I am of considered opinion that the courses offered by M/s FASPL do provide the opportunity to the trainees to undertake 'self-employment' directly after the training or coaching and also provide opportunities of 'self-employment'. Further, any person undertaking such a training or coaching does it only with a view to get an employment or to pursue self employment in a particular field, say in aviation industry. There can not be any other purpose for joining such a course. Naturally, they join such courses only because it is provided by an institute which equip them with skills and develop ability in them to pursue a career in the desired field. It is no bodies case that all trainees who pass out from such an institute would necessarily get employment or be successful in being self employed in the chosen field, but definitely such persons who undergo such training or coaching have an 'advantage' or 'edge' over those who have not. It is this 'edge' or 'advance', which to my mind is what is referred to as "imparting skill to enable the trainee to seek employment or undertake self employment " in Notification No. 24/2004-ST, dated 10.9.04. Since this notification operated during the entire period of demand under SCN dated 20.10.10, the benefit of the exemption contained therein can not be denied.

11. We are in general agreement with the above observation of the original authority. However, we note that the ability to seek employment after the completion of a training course in terms of the explanation provided in the said Notification itself is sufficient for claiming the exemption. In the present case, we find that the courses offered by the appellant – assessee are covered by the scope of Notification 24/04-ST and the exemption provided therein cannot be denied.

12. On the second issue relating to the liability of the appellant – assessee on the payments made to Edexcel, U.K., we note that M/s.Edexcel awarded BTEC Higher National Certificate recognized in more than 110 countries. The agreement entered into between the appellant – assessee and Edexcel has been highlighted by the Id. Counsel for the appellant – assessee, to reiterate the point that there is no representational right granted to the appellant - assessee. We

have perused the agreement dated 01.02.2006. The Original authority relied on clause 7 of the agreement. It stipulates that Edexcel shall provide training exclusively to Frankfinn. For any Edexcel qualification in India aimed at target sector clause 11, 12, 13 and 14 of the agreement stipulate that Edexcel shall send a member of staff from U.K. to deliver staff development for BTEC programmes; Shall provide training material to the faculty members to be trained and also provide technical assistance in completing Centre approval and qualification approval forms required to be completed for becoming a BTEC Centre and to offer BTEC qualification. It is also stipulated that Edexcel shall provide prompt advisory support through nominated staff in U.K. to assist the centre in the operation and management of the BTEC qualifications. The agreement further stipulates that appellant-assessee shall comply with all the terms and conditions laid down in the BTEC International approval (BIA) Form and as agreed with Edexcel from time to time. Clause 49 of the agreement permits the appellant assessee to use Edexcel name or trade-mark for the purpose of promoting its Diploma and Edexcel's BTEC – HNC to call the course "Frankfinn's one year Diploma in aviation, hospitality and travel management alongwith BTEC higher national certificate by Edexcel, U.K." and will be permitted to mention the exclusive arrangement in India.

13. We have noted that M/s. Edexcel are themselves not having any coaching package or course of training in this field. They are basically an entity to certify vocational qualification and is an awarding body for BTEC National and Higher National Diplomas and Certificates. In order to become a BTEC Centre,

Edexcel provides for staff development, to prepare the Institute to the required level of quality standards. The agreement entered into by the appellant assessee with Edexcel is only for that purpose. We are not able to discern any representational right offered to the appellant - assessee in the scope of the said agreement. The Original Authority also did not elaborate what type of representational right has been granted by Edexcel to the appellant – assessee in terms of the said agreement. Basically, Edexcel provides for an international recognition of the courses offered by the appellant – assessee, for which certain standards are to be met. On completion of the training course, the Diploma Certificate is issued to the participant by Edexcel. The appellant assessee is paying certain consideration for the recognition of their institute and for award of Diploma Certificate by Edexcel. There is no representational right in the scheme of things, as laid down in the agreement.

15. On the third issue regarding the liability of the appellant- assessee to pay service tax on various reimbursable expenditures incurred by them, we note that the reliance placed by the original authority on the provisions of Rule 5 (1) of Service Tax Valuation Rules, 2006 is not legally sustainable. We note that the Hon'ble Delhi High Court had struck-down the said Rule as ultra vires of Section 66, 67 of Finance Act, 1994 in the case of Intercontinental Consultants and Technocrats Pvt. Ltd. (supra). Here we also note that the agreement entered into by the appellant - assessee with various franchisees clearly provides for re-imbursement of various

expenses, on actual basis, by the franchisee to the appellant assessee. A perusal of the contract reveals such arrangement. Section 11 of the Agreement states that franchisee shall pay to the appellant - assessee for text books, study materials, cost of advertisement and publicity campaigns etc. The reimbursement of these expenditures has also been recorded in the proceedings before the lower authorities. In this connection, we also refer to various decisions of the Tribunal – Reliance Industries Ltd. – 2008 (12) STR 345 (Tri. Ahmd.), Air Bus Group India Pvt. Ltd. – 2016 (45) STR 120 (Tri-Del.).

16. In view of the above discussion and finding, we hold that the impugned order confirming the liability of the appellant- assessee to pay service tax under the category of commercial coaching and training by denying exemption under Notification 24/2004; on reimbursable expenditure under franchisee services, on payment to Edexcel under franchisee services are not tenable. Here it is to be noted that the liability of the appellant - assessee for service tax under management and business consultant service, as confirmed by original authority has not been disputed in this appeal. The same is affirmed. Accordingly, the appeals filed by the assessee -appellant are allowed.

17. For the reasons recorded above, we find no merit in the appeals filed by the Revenue. The same are rejected.

[Pronounced in the open Court on 20.03.2017)

(B. RAVICHANDRAN)
MEMBER (TECHNICAL)

(S.K. MOHANTY)
MEMBER (JUDICIAL)

Anita