CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

West Block No.2, R.K.Puram, New Delhi

COURT-I

Date of hearing: 28.06.2017
Date of Pronouncement:13.07.2017

Appeal No. ST/3042-3044/2012-CU[DB]

[Arising out of the Order-in-Appeal No. 92/S.Tax/D-II/2012 dated 02.05.2012 and passed by the Commissioner of Central Excise, New Delhi]

M/s. Brilliant Tutorials Pvt. Ltd. … Appellant

Vs.

C.S.T. New Delhi ... Respondent

Appearance:

Present Shri Ashwani Sharma, Advocate for the appellant
Present Shri Amresh Jain, DR for the respondent

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

FINAL ORDER No. 55113-55115/2017

Per V. Padmanabhan:

These three appeals deals with the same issue but for different periods and hence are being taken up together for a decision in this common order. The appellant is engaged in providing taxable services under the category of commercial training and coaching services leviable to service tax under the Finance Act 1994. They offer various class room programmes and are also supplying study material and books to the students and to other institutes. During the audit of the records of the appellant, Revenue noticed that such study materials, journals had been invoiced separately. The consideration received for such study material were not included for payment of service tax on the coaching services. Accordingly, Revenue raised demands for service tax on the consideration and confirmed such demands through the various orders in original. The same have also been upheld in the impugned orders. Aggrieved by the same, the present appeals have been filed.

2. With the above background, we have heard Shri Ashwani Sharma, Advocate for the appellant and Shri Amresh Jain, DR for the respondent.

3. The Ld. Counsel argued that the appellants are engaged in providing coaching services for which they recover the fees. The relevant study materials are also made available to the students for which the consideration is separately received. He further submitted that they will be entitled to the benefit of notification no. 12/03-ST dated 20.06.2003 which grants exemption to the value of goods and material sold by the service provider to the recipient of the services. He also relied upon the decision of the Tribunal in the case of ***Cerebral Learning Solutions Pvt. Ltd. Vs. CCE Indore 2013 (32) STR 379 (Tri-Del)*** wherein the issue has been decided in favour of the appellant.

4. The Ld. DR supported the impugned orders. He argued that the benefit of exemption vide notification no. 12/2003-ST is available only in those cases where the study material has been sold by the appellant to the recipient of services. He further

argued that the authorities below have held that these students did not have any option but to pay for such study material. Accordingly it is to be held that the value of study material is nothing but a part of the consideration for rendering of services. He also relied upon the case of ***Soni Classes Vs. CCE Jaipur 2013 (30) STR 92 (Tri-Del).***

5. Heard both the sides and perused the records.

6. The appellant is engaged in providing coaching services and are receiving consideration for the same from the students. Service tax has also been paid on such consideration. The dispute is only with reference to case of study material which are made available to the students, invoiced separately and amounts recovered in addition to the fee charged for class room programmes. The Revenue's contention is that such study material cannot be considered as study material which are sold, but are part of the consideration received for the services of coaching. The claim of the appellant on the other hand is that they will be entitled to exemption under notification no. 12/2003-ST.

7. We note that CBEC has issued the circular no. 59/08/2003-ST dated 20.06.2003 in which it was clarified that the exemption vide notification no. 12/2003 is inapplicable where in case of commercial training and coaching institutes, the exclusion shall apply only to the sale value of standard text books which are priced and that any study material or written text provided by

such institute as part of service, which does not satisfy the above criteria will be subjected to Service Tax.

8. We find that the issue before us has already been considered by the Tribunal in the case of ***Cerebral Learning Solutions Pvt. Ltd.***. In the above case, a similar issue came up before the Tribunal in which it is decided as follows:

> "**4.** *The genesis of this avoidable lis could be traced to Circular No. 59/8/2003-S.T., dated 20-6-2003. The relevant legislative provision and the exemption granted vide Notification No. 12/2003-S.T., dated 20-6-2003 admit of no ambiguity. It is the admitted factual scenario that the assessee had provided the taxable service of Commercial Training and Coaching qua Section 65(165)(zzc) read with Section 65(26) and (27) of the Act. Section 67 of the Act enjoins that the gross amount charged by the taxable service provider/assessee on the taxable service. Accordingly, the value of the books or course material supplied by the assessees to its students/trainees is required to be included in the value of the taxable service as the gross amount charged by the service provider. The assessee however relied on the Notification dated 20-6-2003, issued by the Central Government in purported exercise of its powers under Section 93(1) of the Act. Under this general exemption notification, the Central Government exempted "so much of the value of all the taxable services, as is equal to the value of goods and material sold by the service provider to the recipient of service, from the Service Tax leviable thereon under Section 66 of the Act" subject to the condition that there is documentary proof specifically indicating the value of the said goods and services and subject to the other eligibility criteria specified in clauses (a) and (b) thereunder. That the assessee had furnished documentary proof indicating a separate value of the course*

material and text books supplied by it and that the assessee is entitled on this account, exemption under the Notification, is not in dispute. What has triggered Revenue's demand for service tax on the value of the course material and text books, is a Board Circular dated 20-6-2003 which seeks to "clarify" that in case of commercial training and coaching institutes, the exclusion shall apply only to the sale value of standard text books which are priced and that any study material or written text provided by such institute as part of service, which does not satisfy the above criteria will be subjected to Service Tax.

5. Appropos, the Board Circular dated 20-6-2003, Revenue assumes; the adjudicating authority concluded; the appellate Commissioner concerned; and the ld. DR reiterates before us that the exemption granted vide the Notification No. 12/2003-S.T., dated 20-6-2003 is inapplicable where a commercial training and coaching institute sells goods or material as part of its service of Commercial Training and Coaching Service which material does not answer the description of priced standard textbooks.

6. In our considered view, the clarification in the Board Circular dated 20-6-2003 is misconceived, clearly illegal and contrary to the statutory exemption Notification dated 20-6-2003. Where the legislature has spoken or in exercise of its statutory power exemption is granted by the Central Government under Section 93 of the Act, the CBEC has no manner of power, authority or jurisdiction to deflect the course of an enactment or the exemption granted. Grant of exemption from the liability to tax is a power exclusively authorised to the Central Government under Section 93 of the Act. This statutory provision accommodates no participatory role to the Board. In seeking to engraft restrictions on the generality and plenitude of the exemption granted by the Central Government, the CBEC transgressed *into the domain of the Central Government under Section 93 of the Act, a course of action clearly prohibited. On the above analysis, that part of the clarification of the CBEC which engrafts a condition that the exemption notification is applicable only where the value of the course material (sold by a commercial or training institute) answers the description of standard text books which are priced, is illegal, unauthorised and of no effect. No notice or cognition can be taken by any authority or such unauthorised exertions by the CBEC. If this illegal and unauthorised condition, imposed on the generality of exemption granted by the Central Government vide Notification No. 12/2003-S.T., dated 20-6-2003 is ignored, as it must, the assessee/appellant is clearly entitles to the benefit of the exemption."*

9. By following the decision of the Tribunal in the above case, the impugned order is set aside and appeal is allowed.

[Pronounced in the open court on 13.07.2017]

(V. Padmanabhan) (Justice Dr. Satish Chandra)
Technical Member President

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