IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI
PRINCIPAL BENCH, COURT NO. I

Service Tax Appeal No. 51418 -51421 of 2017 SM

[Arising out of Order-in- Appeal No. 183-187/ 2017 dated 27.04.2017 passed by Commissioner of Customs & Central Excise (Appeals) Jaipur]

Commissioner of Central Excise **Appellants**
Jaipur

Vs.

1.Adam Smith Institute of Management **Respondent,**
(Icfai National College)
2.Icfai Academy,
3.The Icfai Institute of Science and Technology
4.The Icfai Institute of Science and Technology

Appearance:
Ms Kanu V Kumar, AR Advocate for the Appellant - Revenue
Shri Rachit Jain, Advocate for the Respondent - assessee

CORAM:
Hon'ble Mr. Justice (Dr.) Satish Chandra, President

Date of Hearing / Decision: 20.11.2017

FINAL ORDER NO. 58162-58165/2017

Per: Justice (Dr.) Satish Chandra:

The present appeals are filed by the department against Order-in-Appeal No. 183-187/ 2017 dated 27.04.2017.

2. The brief facts of the case are that, the appellant is a deemed university and providing commercial training and coaching services covered under the Finance Act, 1994. It has various branches

throughout India. The department has brought the said commercial training and coaching services under the clutches of service tax. But by the impugned order, the Commissioner (Appeals) observed that the main appeal is already lying in Hyderabad. So for want of jurisdiction, appeal filed by the department were dismissed. Being aggrieved, the Revenue has filed the present appeals.

3. With this background, we heard Ms Kanu V Kumar and Shri Rachit Jain, learned representative of the parties.

4. After hearing both the parties and on perusal of material available on record, it appears that an identical issue has came up before the Tribunal in assessees own case in Hyderabad ***The Icfai University vs. CCE, Hyderabad [Final Order No. A/31654 - 31657/2017 dated 24.10.2017***] where it was observed as under before granting relief:

> *9. It can be seen from the above reproduced notifications that the explanation as to what is vocational training institute indicates that the said exemption can be extended to any vocational training institute which imparts skills to enable the trainee to seek employment or undertake self-employment directly after such training or coaching. It is nobody s case in all these appeals that for completion of the educational programmes conducted by the appellants, students are employed either directly by the employers or can seek self-employment. We find that in support of such a claim,*

appellants have enclosed a list of the students who were employed by various industries on successful completion of education programmes conducted by the appellants. In our view, there can not be any doubt as to the fact that the students successfully completing the educational programmes of the appellants are being selected for employment by various organizations. On this factual matrix, we find that the decision of the Tribunal in the case of Ashu Export Promoters Pvt Ltd., (supra) which has been affirmed by the Hon ble High Court of Delhi is covering the issue in favour of the appellant. We reproduce the said ratio:

> ***"11. It is evident that the term "vocational training institute" included the commercial training or coaching centers which provide vocational coaching or training meant to "impart skills to enable the trainees to seek employment or to have self employment directly after such training or coaching . The notion of such training institute having been recognized or accredited to nowhere emerges from such a broad definition. The further Notification of 2010 substitutes the existing explanation to the term "vocational training institute"and narrowing it to those institutes affiliated to National Council for Vocational Training offering courses in designated trade in fact supports the assessee . Had the intention been to exempt only such class or category of institutions, the appropriate authority would have designed such a condition in the original Notification of 2003 and Notification No.10 of 2004 which had been relied upon in this case."***

We also find that the coordinate bench of the Tribunal presided over by the Hon'ble President in the case of ***Actor prepares Vs CST Mumbai [2014(33) STR 546 (Tri-Mum)]*** *has also come to the same conclusion and we reproduce the relevant paragraphs.*

"*5. Admittedly, the assessee is neither an Industrial Training Institute or an Industrial Training Centre affiliated to the National Council for Vocational Training nor is offering courses in designated trades as notified under the Apprentices Act, 1961. The issue therefore is whether the petitioner which is admittedly vocational training institute and satisfies the criteria for exemption under Notification No. 24/2004-S.T., is yet disentitled to the benefit of the exemption. The adjudicating authority assumed that the assessee is not entitled to exemption from the liability to Service Tax, as the assessee did not satisfy the requirement of a vocational training institute as defined in exemption Notification No. 3/2010-S.T.*

> ***6. In our considered view, this assumption by Revenue and by the adjudicating authority is fallacious and misconceived. The power to grant exemption, in the nature of an executive exercise of power is under Section 93 of the Act. The provision authorises no grant retrospective exemption or to alter the scope of an extant exemption retrospectively. In this view of the matter, exemption Notification No. 3/2010-S.T., dated 27-2-2010 can only have prospective effect and cannot alter the definition of the expression 'vocational training institute' retrospectively. Vocational Training Institute as defined by Notification No. 24/2004-S.T., dated 10-9-2004 contains no such restrictive definition***

> ***which requires affiliation to National Council for Vocational Training or the requirement of offering courses in designated trades as notified under the Apprentices Act, 1961, by an Industrial Training Institute or an Industrial Training Centre. It is impermissible for an authority conferred with the power to enforce provisions of the Act, to interpret the Act or exemption Notifications issued thereunder, by resorting to assumptions impermissible in law. For the aforesaid reason, the adjudication order is fallacious and unsustainable***. *It is accordingly quashed. The appeal is allowed."*

Similar views have been expressed by the coordinate bench of the Tribunal in the case of ***WLC College India Ltd [2012(27)STR 377(Tri-Del)]*** *which has been upheld by the* ***Hon'ble High Court of Delhi*** *as reported at* ***2015(38)STR J 207***.

10. In view of the foregoing, in the facts and circumstances of this case, service tax demands raised and confirmed in the denovo adjudication by denying the benefit of exemption notification for the period 1.07.2003 to 31.3.2005 is incorrect and unsustainable.

11. Accordingly, the impugned orders are set aside and the appeals are allowed."

5. From the above, it is observed that the Tribunal has decided the appeal on its merits.

6. By following our earlier order (supra), we find no reason to interfere with the impugned order and the same is hereby sustained along with the reasons mentioned therein.

7. In the result, the Appeals filed by the Department are dismissed.

(Dictated and pronounced in open court)

(Justice (Dr.) Satish Chandra)
President

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