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

Service Tax Appeal No. 725 of 2011
Service Tax Appeal No. 1526 of 2011

[Arising out of the Order-in-Appeal No. IND/67/2011 dated 10.02.2011 EX/000/APP/293/11 dated 19/28.7.2011 passed by Commissioner of Customs, Central Excise & Service Tax (Appeals I) Indore]

National Institute for Career & Education (NICE) — **Appellant**

Vs.

Commissioner of Central Excise Indore — **Respondent**

Appearance:

Shri AK Batra, Chartered Accountant for the Appellants
Shri Amresh Jain, DR for the Respondent

CORAM:

Hon'ble Mr. Justice (Dr.) Satish Chandra, President
Hon'ble Mr. B Ravichandaran, Member (Technical)

Date of Hearing/ Decision: 06.12. 2017

FINAL ORDER No.58410-58411/2017

Per: B Ravichandaran:

The appellant is aggrieved by the orders dated 11.2.2011 and 19/28.7.2011 of Commissioner (Appeals), Indore.

2. The appellants are engaged in training, coaching and educational services. The dispute in the present case relates to certain courses conducted by the appellant. The Revenue entertained a view that courses conducted by the appellant in affiliation with Institute of Advance Studies of Gandhi Vidya Mandir, Rajasthan and Management courses in association with Australian Science and Management Academy (ASMA) with MMC, University of Ballarat, Australia are liable to service tax as commercial coaching and training services. The appellants contested the claim of the Revenue, stating that these courses resulted in issue of degrees which are recognized by the law for time being in force in India. As such, these are educational services not covered by commercial training or coaching.

3. The impugned orders held that these courses are not recognized by competent authorities and are not excluded from tax entry as educational service.

4. Learned Counsel appearing for the appellant submitted that they have an agreement with Institute of Advance Studies in Education of Gandhi Vidya Mandir, Rajasthan which is a deemed university. With reference to distance learning. Appellant is affiliated to Vidya Mandir, a deemed university in terms of Section 3 of UGC Act. The courses conducted by them result in issue of a degree by Gandhi Vidya Mandir. The contention of the Revenue

that appellants themselves do not issue any degree recognized by law is not relevant. Learned Counsel submitted that no educational institution or college by themselves issue any degree. It is a recognized university by UGC, who issue such degrees for the courses conducted in affiliated institutes and colleges.

5. On the second issue, with reference to courses conducted by the appellant in collaboration with MMC college, Ballarat University, Australia, he submitted that the courses are composite, partly conducted in India by the appellant and partly in Australia by MMC College. On conclusion of the course, degree is issued, which is recognized in India for higher education. As such, he submitted that these are not covered by tax entry for commercial coaching services.

6. Learned AR contested the appeal stating that the exclusion for tax under commercial coaching and training is available only for the courses which result in a degree or diploma recognized by the law time being in force in India. Admittedly, there is no evidence produced by the appellant for the courses conducted in Australia, Ballarat University, to have been recognized in India. As such, he supported the findings of the lower authorities.

7. We have heard both the sides and perused the appeal records. On the first issue regarding the appellant's role as part of Distance Learning Education study centre of Gandhi Vidya Mandir,

Rajasthan, a deemed university, we note that the courses conducted by the appellant do result in issue of a degree by Gandhi Vidya Mandir. It is clear that the courses conducted by affiliated Institutes or colleges result in issue of a degree by the University with whom they are affiliated. In other words, no College or Institute issues independently any degree. It is university, who are recognized by UGC, who can issue degree. In the present case, we find that the impugned order falls in error in insisting that the Institute itself should issue a degree. We find no force in such findings. Accordingly, the appellants are not liable to pay service tax on such courses.

8. Regarding the issue with reference to courses conducted by the appellant in collaboration with Ballarat University, Australia, we have specifically sought the clarification from the learned counsel to the effect that whether such a degree issued by foreign university is recognized as per the requirement of Ministry of Human Resources Development, Government of India, by the Association of Indian University (AIU). The AIU is mandated to have recognition of equivalence degrees issued by the foreign university, as stipulated by the Ministry of Human Resources Development, Govt of India. We are unable to accept the submissions of the appellant that courses conducted by the appellant result in issue of degree or diploma which are recognized by the law for the time being in force in India and the in the absence of categorical evidence, we find that the conclusion

made by the lower authorities cannot be interfered with. As a result, we uphold the finding of the lower authorities.

9. The learned Counsel pleaded for waiver of penalty invoking the provisions of section 80 as the issue is one of interpretation of legal provision. The appellant have no malafide intention not to pay the taxes in time. We find that the section 80 can be invoked for the present case for waiver of penalty. Accordingly, penalties are set aside and appeals partly allowed in the above terms.

(Dictated and pronounced in the open Court)

(Justice (Dr.) Satish Chandra)	**(B Ravichandaran)**
President	**Member(Technical)**

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