

IN THE CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL,

WEST BLOCK NO.2, R.K. PURAM, NEW DELHI-110066

BENCH-DB

COURT –IV

Service Tax Appeal No.ST/1079/2011- [DB]

[Arising out of Order-in-Appeal No.138(DKV) ST/JPR-I/2011 dated 06.04.2011 passed by the Commissioner (Appeals), Customs & Central Excise (Appeals-I), Jaipur-I]

M/s.Samadhan Systems (P) Ltd.

...Appellant

Vs.

C.C.E., Jaipur-I

... Respondent

Present for the Appellant : Mr.B.L. Narasimhan, Advocate

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

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

Date of Hearing / Decision : 09.01.2018

FINAL ORDER NO. 50264/2018

PER: B.RAVICHANDRAN

The appellant is aggrieved by the order of Commissioner (Appeals) dated 06.04.2011.

2. The brief facts of the case are that the appellants are engaged in providing computer education in animation and cinematics. They have made an arrangement with Maya Academy of Advanced Cinematics (MAAC). The agreement provides for various obligations and responsibilities on both the parties for providing such computer education to various participants. Certain important features of the agreement are

that MAAC shall provide all the course materials and provide suitable training to the personnel approved by it and cost of the same would be reimbursed by the appellant; conduct regular audit to ensure the standard of coaching and finally issue a completion certificate to the students after evaluating at the time of completion of the course. The appellants are engaged in physically providing all the infrastructure, coaching staff etc. and do undertake such coaching to the participants. The consideration received for such coaching was acknowledged by a receipt issued in the name of MAAC and deposited to the account of MAAC. On such full consideration, Service Tax liability under commercial training or coaching service has been paid by MAAC. 80%, net of service tax, on the gross consideration is repatriated back to the appellant.

3. On the above background, the Revenue entertained a view that the appellants have failed to discharge Service Tax for taxable category of commercial training or coaching service and proceeded against them to demand and recover Service Tax on the full gross amount paid by the students. The original authority after detailed examination of the contractual arrangement and the invoices, certificates, connected to the course, held that the appellants are not liable to Service Tax. He recorded that full Service Tax liability on the gross value received by the students has been discharged by MAAC. There is no question of further confirming any Service Tax against

the appellant. The Revenue preferred appeal against the said order.

4. The impugned order reversed the decision of original authority and confirmed the Service Tax liability of Rs.31,53,810/- covering the period 2004-05 to 2008-09 against the appellant and penalties under Section 76, 77 & 78 were also imposed.

5. The Id. Counsel appearing for the appellant mainly submitted on the following grounds:-

- (a) The full considerations for coaching students are received by MAAC as can be seen from the receipts. The amount is credited to MAAC account.
- (b) The appellants are receiving a part of the said gross amount for the act of managing and conducting the course in terms of the agreement with MAAC. The Service Tax liability on the gross consideration has already been discharged by MAAC.
- (c) The premises in which the appellant is presently running the course which is subject matter of dispute is registered for Service Tax liability under central Registration taken by MAAC. Pursuant to such Central Registration MAAC is paying Service Tax for various centers where such courses are conducted including the premises of the appellant.

6. The original authority is correct in examining the tax liability against the appellant. He categorically held that there is no service provider, service recipient relationship between the appellant and the students as the gross consideration paid by the students were remitted to MAAC. However, no finding on this crucial aspect has been recorded in the impugned order. MAAC have such arrangement with various other coaching centers. In one such case involving M/s.Dream Weavers, Aurangabad the jurisdictional Commissioner (Appeals) examining identical set of arrangement with M/s. MAAC held no tax liability for commercial training or coaching service will arise against M/s.Dream Weavers. In the order dated 09.06.2014 the Commissioner (Appeals) elaborately discussed a similar set of arrangement and came to the conclusion that the appellant is not liable to pay tax as the full amount was subjected to Service Tax for the very same service at the hands of MAAC. Alternatively, it is clear that the appellants if held liable for their activity of coaching are exempted as vocational training institute, as the courses are specific and professional in nature directly resulting in employment in the specialized skills imparted by the appellant. On that ground also no tax liability will arise on the appellant.

7. The Id. A.R. contested the appeal stating that the appellant's arrangement with MAAC to receive consideration for the service cannot take away the tax liability. The students pay the gross amount, which the appellant is authorized to

receive and remit to MAAC. MAAC gives a portion of the amount to the appellant. Such financial arrangement cannot take away the tax liability. In fact, the appellants are conducting courses in their premises using own resources, which are clearly covered by commercial coaching and training service. He supported the findings of the Commissioner (Appeals) to the effect that the liability of the appellant was correctly affirmed in the impugned order.

8. We have heard both sides and perused the appeal records.

9. The admitted facts are that the appellants had Agreement with M/s. MAAC. The said Agreement stipulates various obligations / responsibilities of both the parties. The students who got admitted for the courses pay a consideration, which is credited to M/s. MAAC in full. We have perused the sample invoices. This fact cannot be disputed. The full consideration so received by M/s. MAAC has been subjected to Service Tax under commercial training and coaching service. This has not been disputed. The fact that the premises in which the training is carried out by the appellant is also listed for central registration to discharge Service Tax by MAAC is also not disputed. In such situation, it is not clear as to how a Service Tax liability on the appellant can again be fastened on the very same activity. We also note that the appellant do not receive any amount from the service recipient as a consideration. The arrangement is that the gross amount paid by the students is credited to MAAC on which Service Tax has

been discharged. It is clear that the appellant acts as an instrument in carrying out the training programme which is designed and managed by the MAAC. This is evident from the course completion certificate issued by MAAC on completion of the course. We have perused the sample certificate issued in this regard. The appellants name is nowhere figuring in the completion certificate. All these facts will indicate that MAAC is overall managing and the commercial coaching and training service suffered tax at their hands.

10. We also perused the order of Commissioner (Appeals), Aurangabad in a similar set of facts though with reference to another business partner of MAAC. The issue was examined in detail in the said order. It was concluded that no Service Tax liability will arise on the business partner of MAAC under commercial coaching and training service.

11. In view of the above discussion and analysis, we find no merit in the impugned order upholding the Service Tax liability against the appellant. The same is set aside and the original order is restored. The appeal is allowed.

[Dictated and pronounced in the open Court]

(B. RAVICHANDRAN)
MEMBER (TECHNICAL)

(S.K. MOHANTY)
MEMBER (JUDICIAL)