IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No. 2, R.K. Puram, New Delhi – 110 066.
Principal Bench, New Delhi

COURT NO. IV

DATE OF HEARING : 17/12/2018.
DATE OF DECISION: 17/12/2018.

Service Tax Misc. Application No. 50161 of 2018 in Appeal No. 50537 of 2017

[Arising out of the Order-in-Original No. UDZ-EXCUS-000-COM-0099-102-16-17 dated 09/01/2017 passed by The Commissioner, Central Excise Commissionerate, Udaipur.]

M/s Allen Career Institute — Appellant

Versus

CCE & ST, Udaipur — Respondent

Appearance

Shri Sanjeev Agarwal, C.A. – for the appellant.

Shri R.K. Majhi, Authorized Representative (DR) – for the Respondent.

CORAM: **Hon'ble Shri C.L. Mahar, Member (Technical)**
Hon'ble Ms. Rachna Gupta, Member (Judicial)

Final Order No. 53488/2018 Dated : 17/12/2018

Per. C.L. Mahar :-

The brief of the matter are that the appellants are conducting commercial coaching or training for various competitive examination for entrance into the courses, such as, IIT, NIT, Medical College admissions. For the purpose of attracting the maximum number of students, the appellants are

advertising their courses and for promoting their business, they have devised certain innovative schemes. There is a programme of scholarship to the meritorious students. This scholarship is provided by way of percentage concession in the course fee which is otherwise normally fixed and charged from all the candidates in the normal courses of business. The scholarship which is nothing but a concession in the fee charged by the appellant in the normal course of their business. The department has entertained a view that the amount of concession in the name of scholarship given by the appellant to its various students is in a way a non-monetary consideration and as per Section 67 of the Finance act, 1994 read with Rule 3 of Service Tax Valuation Rules, 2006, the appellant should have paid Service Tax on the normal fee charged by them from the other students who are not holding any scholarship that is to say that even for students who has got scholarship concession from the normal fee, the normal fee should have been taken as value of service for payment of service tax.

2. Four show cause notices came to be issued to the appellant covering the period 01/10/2010 to 31/03/2015 which got adjudicated by learned Commissioner vide impugned order dated 09/01/2017 wherein a demand of Rs. 2,50,04,994/- has been confirmed against the appellant under Section 73 of the Finance Act, 1994. Penalty under Section 76 have also been imposed and other penalties have been imposed under Section 77 (2). The

appeal is against the above-mentioned impugned order-in-original.

3. It has been contended by the learned Consultant appearing for the appellant that as per provisions of the Section 67 (1) of the Finance Act, 1994, the valuation of taxable service is the gross amount charged by the service provider in the normal course of business to the service recipient. It has been argued by the learned Consultant that the fee received from the students, who are otherwise entitled for scholarships, in fact is gross amount charged from such students and the appellant has not received any other consideration whether monetary or otherwise except fee from the students and, therefore, the gross amount is primarily the fee amount which has been charged by the appellant from the students and, therefore, it has been contended that there is no violation of provisions of Section 67 (1) I of the Finance Act, 1994.

4. It has further been added that scholarship/discount/fee concession which is being offered by the appellant to all the students and same is mentioned in their prospectus itself and same is universally available and applicable to all the students who seek admission into their institute and qualifying as per the criteria for such concession or scholarship. The learned Consultant has also submitted that the matter is no longer res-integra in their own case, this Tribunal vide its Final order No.

57680-57683/2017 dated 03/11/2017 has already decided the matter in their favour.

5. We have also heard learned DR who has agreed that the matter is no longer res-integra as the issue already stand decided by this Tribunal in case of the appellant's own case for earlier period vide above mentioned order.

6. Having heard both the sides, we find that the matter is no longer res-integra and it has already been decided by this Tribunal in its Final Order No. 57680-57683/2017 dated 03.11.2017. The relevant extract of the above judgment are reproduced below:

> ***"3. The learned Counsel appearing for all the appellants submitted on the following lines :-***
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> ***(a) the appellants are conducting commercial coaching or training for competitive examination. They are advertising their courses. In order to attract bright and better candidate and also to promote their business they have devised certain criteria which is pre-notified and is not influenced by any other relationship between the service provider and the service recipient schemes. The scholarship programme is part of such schemes. The scholarship is extended by way of a percentage concession in the course fee which is otherwise normally fixed for all the candidates. Such concession is a bonafide business transaction There is no element of non-monetary consideration attributable to such transaction.***
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> ***(b) the Original Authority referred to Rule 3 of the Valuation Rules presuming that there is a non-monetary consideration. When there is a declared policy available to any candidate***

fulfilling certain criteria the same cannot be considered as a transaction influencing the actual money payment.

(c) the penalties imposed are also not sustainable in the facts and circumstances of the case.

4. The learned AR submitted that the fees normally fixed are determined and applicable to all candidates. For certain type of candidates whose profile can be used by the appellants for business promotion certain concessions are given. He supported the findings of the lower authorities to the effect that his transaction between the main appellants and the candidates who avail the concessional rate cannot be considered as part of normal business transaction and accordingly Rule 3 was correctly invoked in this case.

5. We have heard both the sides and perused the appeal record. The central point of dispute is whether the main appellant are correct in discharging service tax only on the amount received from the candidates who participated in the coaching classes without taking the consideration uniformly for all the candidates. In other words, whether the concessional rate of fee collected from certain category of candidates can be considered as a bonafide transaction eligible for treatment as gross value under Section 67 for tax purpose or not. We have perused a sample prospectus announcing the scholarship programme. It is clear that said scholarship programme is to extend concession in the course fee to a particular set of candidates listed therein. The nature of candidates is either based on their proficiency in particular field based on their qualification or being an old student of the main appellants or brothers or sisters attending courses with the main appellant. It is apparent that this is a scheme to promote their business and it is notified to the public. In terms of Section 67, the service tax liability will arise on gross value. In the present case, the appellants are not contesting their liability to pay service tax on the gross value on the amount whatever they received from the candidates. We find no reason to consider the concessional portion of fee which is as per the pre-declared publicity material, as part of non-monetary consideration requiring addition to the monetary consideration to arrive at the gross value. We find no

reason to invoke valuation rules in the present set of facts. There is no sustainable reason to reject the scheme published by the appellants for fee concession as long as it is a bonafide trade practice. We could not find any reason to hold that the scheme is other than a bonafide practice. As this is the only dispute in the present appeals, we hold that the appellants will succeed on this point. ”

7. In view of above, we hold that the order-in-original is devoid of any merits and same is set-aside.

8. Appeal is accordingly allowed. The miscellaneous application also stands allowed.

(Operative part of the order pronounced in the open court.)

(Rachna Gupta)
Member (Judicial)

(C.L. Mahar)
Member (Technical)

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