

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
SOUTH REGIONAL BENCH AT HYDERABAD
BENCH - DB
COURT - I**

Appeals Involved

ST/1884/2012,

ST/2896/2012,

ST/2799/2012

**CHAITANYA EDUCATIONAL
COMMITTEE**

Appellant(s)

**Commissioner of Customs, Central
Excise and Service Tax GUNTUR**

Appellant(s)

Versus

**Commissioner of Customs, Central
Excise and Service Tax GUNTUR**

Respondent(s)

**SREE CHAITANYA EDUCATIONAL
COMMITTEE**

Respondent(s)

Appearance:

Mr. G. Shivadas, Adv for the Assessee

Mr. B. Narayan Reddy, & Mr Sanjeev Reddy, A.Rs for the Revenue

CORAM:

HON'BLE Mr. M.V.RAVINDRAN, MEMBER (JUDICIAL)

HON'BLE Mr. MADHU MOHAN DAMODHAR, MEMBER (TECHNICAL)

Date of Hearing: 24/01/2018

Date of Decision: 24/01/2018

Interim Order No: 1-3 / 2018

[Order per: M.V.RAVINDRAN]

All these appeals are disposed of by a common order and they pertain to the assessee's appeal and Revenue's appeal in respect of same issue.

2. Appeal Nos. ST/1884/2012 and ST/2896/2012 are filed by Shri Chaitanya Educational Committee, the assessee and Appeal No. ST/2799/2012 is filed by the Revenue.

3. Heard both sides and perused the records.

4. In the appeals filed by the assessee, the contest is regarding the demand of service tax on the assessee in respect of services rendered by them as being classifiable under commercial coaching and training services. Appellant herein imparts education to their students for 11th and 12th Standards and Society is recognised by Andhra Pradesh Intermediate Board; Syllabus is formed as per the Andhra Pradesh Intermediate Board's direction and appellant also includes the syllabus for preparing the students for IIT Entrance/EAMCET examination i.e. integrated with regular syllabus for intermediate examination of State Boards; pertinent to note that the Andhra Pradesh Intermediate Board has given clear guidelines that teaching students for EAMCET is mandatory. It is the case of the Revenue that the demand of the service tax liability is correct as the appellant herein has not issued any certificate or diploma or degree or any educational qualification recognised by law which would exclude the appellants from service tax net while it is the case of the assessee that the certificate issued by them is by the Controller of Examinations Intermediate Board as well as Principals of the respective colleges which is run by the assessee's society.

5. Learned counsel submits that the issue of taxability of the services rendered for the period 2003-07, period prior to the issue involved in these appeals i.e. 2007 to 31.03.2011, is decided against them by the Tribunal in their own case as reported at [2016(41)STR 241 (Tri-Bang)] wherein there was difference of opinion and the Third Member on reference had held that

the definition of commercial training and coaching centre services needs to be interpreted in the following manner:

“80. The definition of “Commercial Training or Coaching Centre” have both inclusive and exclusive part, i.e., it may include certain things and exclude others. The word “any”, e.g., institute or establishment providing Commercial Training or Coaching in the main part of the definition, is a word having very wide meaning. It is noted that the definition also categorically includes “coaching or tutorial classes”. The word “includes” in the definition makes it clear that the intention was to make it more extensive. In this perspective, the exclusion part of the definition suggests a very limited purpose to “pre-school coaching and training centre” and any institute or establishment, which issues any certificate or diploma recognized by law. The “coaching or tutorial classes” mentioned in the inclusive part of the definition and it cannot be covered in the exclusive portion of the definition. While interpreting the definition of “Commercial Training or Coaching Centre”, the exclusion part must be strictly construed, what is being included in the definition cannot be excluded, unless it is specifically mentioned. In the present case, according to the appellant, they were offering coaching classes to the students of intermediate standard of their colleges and other colleges for appearing joint entrance examination of IIT, JEE, etc. In my considered view, when “coaching classes” have categorically included in the definition, then, it cannot be excluded by stretching the meaning of exclusion clause of the definition.

81. The learned Advocate strongly relied upon the Board’s Circular No. 59/8/2003-S.T., dated 26-6-2003, whether Service Tax is applicable on institute or establishment providing commercial coaching in addition to the recognized degree courses. It is clarified that some institutes like colleges, apart from imparting education for obtaining recognized degree/diploma/certificate, also impart training for competitive examinations, various entrance tests. Such institutes or establishments, which issue a certificate, diploma or degree recognized by law, are outside the purview of “Commercial Training or Coaching” institute. Thus, even if such institutes or establishment provides training for competitive examinations, etc., such services rendered would be outside the scope of Service Tax. In my view, while deciding the words “any institute or establishment which issues certificate or diploma or degree or any educational qualification recognized by law”, ordinarily, would not include coaching or tutorial classes. After close reading of Board Circular and the definition, it appears that the institute or establishment issuing certificate, recognized by the law, is also conducting coaching classes, would be outside of the purview of the levy of Service Tax. The learned Advocate stated that in the present case, the coaching classes are integrally connected with the intermediate courses conducted by the colleges. The contention of the learned Advocate that the certificate issued by Andhra Pradesh Board is endorsed by the Principal of the college, which would cover the exclusion part of the definition. In this context, it is required to examine the facts of the case as to whether the coaching classes offered by the Appellant Society are integrally connected with the intermediate courses.”

After interpreting the same, in paragraph No 83, he held as under:

“83. The students appear for the intermediate examinations under the hall ticket issued by the respective colleges and the students after passing examination, are awarded a certificate which issued by Intermediate Board Education duly endorsing stamp of respective college. However, the students of said colleges underwent coaching in different campus of the appellant on payment of fee ranging from Rs. 8,000.00 to Rs. 75,000.00 which was accepted by Shri K.V. Subba Rao, Accounts Manager of the appellant in his statement dated 28-2-2006. He also confirmed that the amount was collected from the different students of different colleges who underwent coaching of

JE-IIT, EAMCET, etc., in different branches of the Appellant Society situated in Andhra Pradesh and other places of India. It is clearly evident from the facts of the case that the coaching classes were conducted in different campuses, separate fees and totally independent and had no nexus with the intermediate courses of the colleges. So, I agree with the finding of the learned Member (Technical) that Service Tax is leviable on the Appellant Society on such coaching classes.”

It is the submission of the learned counsel that the view expressed by the Third Member is a majority view and can be interpreted in their favour while department's interpretation is that the issue is decided in their favour on merits. It is his further submission as was pointed out by the learned counsel that the issue whether services rendered would fall under the category of commercial coaching and training centre of similar kind of education imparted by the Institute was decided by this Tribunal in the case of ITM International Pvt Ltd [2017-TIOL-3635 (CESTAT New Delhi)] wherein in the difference of opinion, the Third Member in his order held as under:

“6. The next question is whether such a degree or diploma is recognized by law for the time being in force. Here, the reason discussed by Member (Judicial) is proper and sustainable. The UGC and AICTE etc are recognizing bodies of a University or an institution. The degree or diploma awarded by these institutions are being considered as recognized by law for time being in force. In this connection, we note the position has been clarified regarding the scope of the term qualification " recognized by any law " will include such course as are approved or recognized by any entity established under a central or a state law, including delegated legislation, for the purpose of granting recognition to any education course.

7. Further, it is seen that the Ministry of Human Resource Development vide their notification dated 13.03.1995 stated that the Govt. of India had decided that those foreign qualifications which are recognized/equated by Association of Indian Universities are treated as recognized for the purpose of employment to posts and services under the Central Government. No separate orders for recognition of such foreign qualification is needed to be issued. Here it is relevant to note that UGC had advised the Indian students to ascertain information regarding equivalence of the degrees and diplomas awarded by accredited Universities abroad. The degree/diploma programmes offered by the appellant resulting in the issue of certificate by the University of London (LSE) which is treated as equivalent to degree or diploma of public Universities in India. As such, I find that the appellants will fall outside the scope of definition for " commercial training or coaching centre. " It may be noted here that even the impugned order indicated that the certificate and diplomas issued by LSE are recognized by all the national universities. However, the adjudicating authority did not consider his own finding as relevant and followed the Board circular which refers to the recognition by statutory authorities like UGC etc.

8. It is relevant to note here that the department has been taking consistently a view that when an educational institute is affiliated to a university/institution awarding a degree recognized by law, then the said institute is not a commercial training or coaching centre. Reference can be made to circular No.26/2003- 28.08.2012 and 26.02.2010 of the Board. Admittedly, the appellants were providing course resulting in the award of B.Tech, BBA, MBA of Allahabad Agricultural Institute (deemed university). No demand for Service Tax has been made in respect of these courses. Even on this ground, the appellants can not be considered as commercial coaching or training centre. Apart from the fact that the appellants will fall outside the purview of commercial coaching or training centre, I find that the Business English Course and Personality Development course offered by the appellants will be covered by exemption notification No.9/2003 ST . In this connection, reliance can be placed on the decision of the Tribunal in Anurag Soni 2017 (52 STR 18 Tribunal Delhi) wherein the tribunal observed as below:

"5. Notifications No.9/2003 and 24/2004 exempts vocational training institutes from payment of Service Tax entry "commercial training or coaching". "Vocational Training Institute" means a commercial training or coaching centre which provides vocational coaching or training that impart skills to enable the trainee to seek employment or undertake self-employment, directly after such training or coaching. Admittedly, the appellants are engaged in providing coaching in English, French and German language skills. Training included improving the skills of pronunciations, manner of speaking etc. The original authority recorded that this sort of training imparted by the appellant helps in getting employment for the participant in Multi National Companies and various Corporation/Institutions where improved particular skill in speaking is required qualification. We are in agreement with the findings recorded by the original authority. The impugned order has at length examined the provisions of Section 3(2) of the Official Language Act, 1963, Article 343(2) of Constitution of India and the status of English in India. We find that the whole discussion is misplaced and irrelevant to decide the taxability of the appellant under "commercial coaching or training". As rightly contended by the appellant, it is not the status of the English, but the nature of coaching given by appellant which is relevant to decide the exemption under notification. Neither the tax entry nor the exemption notifications are having reference to any point of discussion which formed basis for the conclusion drawn by the impugned order. We find that the impugned order was mis-directed when examining the legal issue. Accordingly, same is set-aside."

It can be noticed from the above reproduced paragraphs of the two Member Benches of the Tribunal, diagonally opposite views on the taxability of the services of the kind rendered by the appellant herein. Since there is divergence of views between two Benches of the Tribunal of equal strength, it is imperative that the said difference be settled by a Larger Bench of the Tribunal.

6. It needs to be mentioned here that against the judgement of the Tribunal in the case of the assessee for the period 2003-07, Revenue is in appeal before the Hon'ble Supreme Court, and assessee is before High Court.

7. In view of the foregoing, Registry is directed to forward a copy of this order along with annexures of the case laws as mentioned hereinabove to Hon'ble President to constitute a Larger Bench to come to a conclusion as to which view would be correct in the circumstances.

(Order pronounced and dictated in open court)

MADHU MOHAN DAMODHAR
MEMBER (TECHNICAL)

M.V.RAVINDRAN
MEMBER (JUDICIAL)

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