CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH AT HYDERABAD
Division Bench
Court – I

MISCELLANEOUS APPLICATION No. ST/MISC/30030/2018
in
Appeal No. ST/327/2008
(Arising out of Order-in-Original No: 02/2008(ST), dated 28.02.2008, passed by CCCE&ST, Hyderabad-IV Commissionerate)

ENGINEERING STAFF COLLEGE OF INDIA ….. Appellant(s)

Vs.

CCCE&ST, Hyderabad-IV ….. Respondent(s)

Appearance
Shri Cherian Punnoose, Advocate for the Appellant.

Shri Arun Kumar, Dy. Commissioner /AR for the Respondent.

Coram:

Hon'ble Mr. M.V. RAVINDRAN, MEMBER (JUDICIAL)
Hon'ble Mr. P.V. SUBBA RAO, MEMBER (TECHNICAL)

Date of Hearing: 10.05.2018
Date of Decision: 01.06.2018

FINAL ORDER No.A/30612/2018

[Order per: M.V. Ravindran]

1. This appeal is directed against Order-in-Original No. 02/2008(ST), dated 28.02.2008.

2. Heard both sides and perused the records.

3. The relevant facts that arise for consideration are the appellant herein was conducting training programmes for Engineers and Managers in Engineering profession and provide consultancy services to the industry and government agencies and were offering tailor made programmes to suit to the requirement of individual organisations; they obtained service tax registration on 28.03.2000 under the category of "Chartered Engineering Service" and subsequently shifted to the services under the category of "Consulting Engineer Service". During the scrutiny of the records of the appellant it revealed that they have been conducting the training programmes during the period July 2003 to March 2006 under the phrase "continuing education and training programme" which included short term programmes of basic subjects, sophisticated technologies and on topics of specialization of contemporary relevant subjects. It is the case of the Revenue in the show cause notice that the appellants had not discharged the service tax liability on the amounts collected for continuing education and training programmes as this would fall under the category of commercial training or coaching classes from 01.07.2003, accordingly demand of service tax liability alongwith interest was raised. Appellant contested the show cause notice before the adjudicating authority on the grounds that appellant is not commercial institution as they are the institute of forum of Institute of Engineers India which has a charter of incorporation in 1935, was formed for diversification of engineering and engineering services. Since they are not of commercial concern as defined under Finance Act, 1994, they would not fall under the category of Commercial

Training and coaching services. Adjudicating authority after following due process of law held that the word “commercial” may not be interpreted the way as has been sought by the appellant and appellant have collected amount from the participants for the training imparted, has to discharge the service tax liability.

4. He also confirmed the demands and imposed equal amount of penalty.

Ld. Counsel submits that they have filed miscellaneous application for raising additional grounds of appeal on 17.01.2018 wherein they had taken a plea that during the relevant period, the definition of Commercial Coaching and training services includes any institute or establishment which issues certificates of diploma or degree or educational qualification, recognised by law for the time being in force. It is his submission that the said ground was not raised in the appeal filed by them and being the question of law, is being raised for the first time before the Tribunal. It is his further submission that their Institute is recognised by All India Council for Technical Education (AICTE). It is his submission that AICTE was started in 1945 and was given a legislative support through an Act of AICTE Act 1987 and that the appellant’s Institute is recognised by AICTE is not having any doubt. He would submit that considering the definition of Commercial Coaching, the appellant’s case be decided in their favour.

5. Ld. DR, on the other hand, reiterated the findings of the lower authorities.

6. On careful consideration of the submissions made, we find that the only ground taken by the appellant before the Tribunal and also argued before the adjudicating authority was that "commercial training and coaching services" will not be applicable to the appellant as they are not commercial in nature. In our view of this argument would not stand to gain inasmuch, the definition of "Commercial Coaching and Training Services" is added with an explanation to give the definition of the word "commercial" means to include charitable institutions or any other institution registered under Societies Act, like the appellant herein. We find that a miscellaneous application was filed on 19.01.2018 for raising additional grounds but is not listed today; we called for the miscellaneous application and on perusal of the same, take it up for disposal. However, we find that the submissions made by the appellant is for raising additional grounds and the appeal needs to be considered by going into the detail to the roof of the dispute, accordingly we allow the miscellaneous application and take the appeal for disposal.

7. We do find that appellant's Counsel was correct in submitting that during the period in question i.e. 1.07.2003 to 31.03.2006, the definition of "Commercial Coaching and Training Services" did indicate that if an assessee is issuing degree or certificate or diploma, if it is recognised by

the law, the service tax liability does not arise and there were various Board's circulars. Since this plea that their Institution has been recognised by AICTE, the same was raised but was not considered by the adjudicating authority, we find that the matter needs reconsideration by the adjudicating authority on this point.

8. Without expressing any opinion on the merits of the case, granting liberty to appellant for filing reply to the show cause notice on the question of whether the degree/certificate/diploma issued by the appellant institute w is recognised by AICTE or otherwise and it is recognised by the law time being in force or not, we set aside the impugned order and remit the matter back to the adjudicating authority to reconsider the issue afresh after following the principles of natural justice. We have not passed any observation on the merits of the case and left all issues open to be agitated before the adjudicating authority.

9. Appeal stands disposed of by way of remand to the adjudicating authority.

(Pronounced in the open Court on 01.06.2018)

(P.VENKATA SUBBA RAO)
MEMBER (TECHNICAL)

(M.V. RAVINDRAN)
MEMBER (JUDICIAL)

VRG