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

Appeal No. ST/906/2009

(Arising out of Order-in-Appeal No. 41/2009 (H-II) S. Tax dated 28.07.2009 passed by Commissioner of Customs, Central Excise and Service Tax, (Appeals – II), Hyderabad)

CC, CE & ST, Hyderabad - ii …..**Appellant(s)**

Vs.

FIITJEE Hyderabad Classes …..**Respondent(s)**

Appearance
Shri Guna Ranjan, Superintendent (AR) for the Appellant.
Shri Praveen Sharma, Advocate for the Respondent.

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

Date of Hearing: 30/05/2018
Date of Decision: 30/05/2018

FINAL ORDER No. A/30661/2018

[Order per: M.V. Ravindran]

The appeal is filed by the Revenue against Order-in-Appeal No. 41/2009 (H-II) S. Tax dated 28.07.2009.

2. Heard both sides and perused the records.

3. Revenue is aggrieved by the impugned order on the ground that the First Appellate Authority has allowed deduction of the value of study material which is provided by the respondent to various students from the gross value which has been considered for discharge of service tax liability under the category of Commercial Training & Coaching Service.

4. Learned Departmental Representative submits that during the period January, 2008 to September, 2008, respondent discharged the service tax liability under the category of Commercial Training & Coaching Services on the amount collected as coaching fees but did not include the cost of study material supplied. The First Appellate Authority has erred in granting the exemption under Notification No. 12/2003 dated 20.06.2003, as such exemption will be available for standard text books and respondent herein had not supplied any text books (standard text books). It is his submission that the students were enrolled for course, along with study material and it is his submission that the appellants are selling the said study materials, to those students who were not enrolled in their coaching classes.

5. Learned Counsel submits that an identical issue came up before the Tribunal in their own case in appeal No. ST/1355/2010. The said appeal was disposed of by Delhi Tribunal by Final Order No. A/50512/2017 dated 23.01.2017 and held in their favour. He reads paragraph No. 5 in the said order. It is his submission, following the

said order No. A/50512/2017, different Benches, by Final Order No. A/50798/2017 dated 07.02.2017 and Final Order No. 50030-50031/2018 dated 03.01.2018 held in their favour and allowed the appeals on the very same assessee.

6. On perusal of records, we find that the issue is correctly stated by both sides as to the demand of service tax liability on the value of the study materials provided by respondent to the students who are undertaking Commercial Coaching and Training Services during the period January, 2008 to September, 2008.

7. We find that Learned Counsel was correct in stating that the issue is no more res integra, and covered by the decisions of the Tribunal by Final Order dated 23.01.2017. The ratio is in paragraph No. 5. We find it do so and reproduce the same.

> *" **5**. The appellants are providing taxable service under the category of "Commercial Coaching and Training" and were discharging service tax on the same. The dispute in the present case is relating to abatement in terms of notification no.12/03-ST towards the amount received on supply of study materials, books/kit. We have perused some of the documents submitted by the appellant to support their claim that they have separate receipt for supply of books and study materials indicating the price clearly. We have also noted that they have sold such study materials /books to non-registered students. Their prospectus advertising for various coaching programmes clearly mentions the price of books and study materials. In such factual scenario, we find that the appellant's claim for exemption under notification no.12/03-ST cannot be rejected. Ld. Counsel for the appellant confirmed that there is no question of their availing any cenvat credit on such books and study materials as there is no tax paid on any of them. We find the impugned order denying the benefit of notification no.12/03-ST is not legally sustainable. In this regard, we also rely on the decisions of the Tribunal in the cases of Cerebral Learning Solutions Pvt. Ltd. – 2013 (32) STR 379 (T-D), Chate Coaching Classes Pvt. Ltd. – 2013 (29) STR 138 (T-M), Pinnacle - 3 Appeal No.ST/1355/2010 (DB) 2011 (24) STR 453 (T-D) and Mastermind Classes Pvt. Ltd. vide Final Order No.53685/2015 dated 19.11.2015."*

8. We do not find any reason to deviate from such a view already taken, in respondent's own case. Accordingly, we hold that the impugned order is correct and legal and does not require any interference. The appeal stands rejected.

(Order dictated & pronounced in open court)

P. VENKATA SUBBA RAO
MEMBER (TECHNICAL)

M.V. RAVINDRAN
MEMBER (JUDICIAL)

Lakshmi….