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

Appeal No.ST/725/2009

(Arising out of Order-in-Appeal No.09/2009 (G) ST, dt.05.06.2009 passed by Commissioner, Customs & C.Ex., (Appeals), Guntur)

CC, CE & ST, Guntur …. Appellant(s)

VS.

Pragathi Competetive Study Center ….. Respondent(s)

Appearance

Shri Dass Thavanam, Superintendent/DR for the Appellant.
None for the Respondent.

Coram:

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

Date of Hearing: 29.05.2018
Date of Decision: 29.05.2018

FINAL ORDER No. A/30703/2018

[Order per: M.V. Ravindran]

1. This appeal is filed by the Revenue against the Order-in-Appeal No.09/2009 (G) ST, dated 05.06.2009.

2. None appeared on behalf of the respondent despite notice. Since the appeal is of 2009 and lies in a narrow compass, we take up the appeal for disposal even in the absence of any representation from the respondent.

3. Heard the Learned Departmental Representative and perused the records.

4. On perusal of records it transpires the issue is regarding the confirmation of demand of Service Tax liability on the respondent under the category of commercial coaching or training centre services during the period 01.07.2003 to 31.03.2008. The case of the Revenue in the show cause notice is that services rendered by the respondent herein are liable to be taxed as they are providing coaching services, while it is the case of the respondent before the lower authorities that they are not covered by the definition during the relevant period as they are not rendering any commercial activity as they were registered under the Societies Act, 1860. Adjudicating authority confirmed the demands raised. On an appeal, the first appellate authority held that if a service provider is registered under the Societies Act, 1860, the said service provider will not get covered under the head "commercial coaching and training centre". To come to such a conclusion, he relied upon the decisions of the Tribunal in the case of Institute of Chartered Financial Analysts of India [2009(14) STR 220]. Revenue is aggrieved by the said order.

5. We find that much water has flown over the bridge after the decision of the Tribunal; the said decision has been set aside by the Apex Court and the matter was remanded back to the Tribunal holding that due to retrospective amendment to the definition of commercial coaching and training centre, any service provider even if he is registered under Societies Act, 1860 is liable to be covered under the said heading. We find that the first appellate authority has not touched the merits of the case which were

put up in the grounds of appeal before him and has disposed of the appeal only on this point. Since the retrospective amendment has been upheld by the Apex Court in the case of commercial coaching and training centre service provider, we, while upholding that the appellant is covered under the commercial coaching and training centre services, remand the matter back to the first appellate authority to reconsider the issue afresh on various other grounds of appeal raised by the respondent before him on merits as well as on limitation. Without expressing any opinion on the merits of the case and keeping all issues open, except the retrospective amendment to the definition of commercial coaching and training centre would cover the appellant's services, we remand the matter back to the first appellate authority to reconsider the issue afresh after following principles of natural justice.

6. The appeal is disposed of by way of remanding.

(Operative part of this order was pronounced
on conclusion of hearing)

(P.VENKATA SUBBA RAO)
MEMBER (TECHNICAL)

(M.V. RAVINDRAN)
MEMBER (JUDICIAL)

Veda