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

Appeal No.ST/77/2010

(Arising out of Order-in-Original No.41/2009-ST dated 16.10.2009 passed by CCCE & ST, Hyderabad - II)

Alchemist HR Services Pvt Ltd …. **Appellant(s)**

VS.

CCE, C & ST, Hyderabad - II ….. **Respondent(s)**

Appearance

Shri G. Shivadas, Advocate for the Appellant.

Shri Dass Thavanam, Superintendent/DR for the Respondent.

Coram:

Hon'ble Mr. M.V. RAVINDRAN, MEMBER (JUDICIAL)

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

Date of Hearing: 05.07.2018
Date of Decision: 05.07.2018

FINAL ORDER No. A/30738/2018

[Order per: M.V. Ravindran]

1. This appeal is directed against Order-in-Original No.41/2009-ST dated 16.10.2009.

2. Appellant is engaged in the activity of arranging placements for students who have completed courses conducted by Institute of Chartered Financial Analysts of India (ICFAI) and its affiliates by way of a scheme called 'Alchemist Special Placement Scheme'. The scheme is governed by the Alchemist (Special Placement Scheme) Regulations, 2005 which are provided in the prospectus of the course enrolled by a student. The scheme is available to students of the ICFAI and its affiliates. A student enrolling for a course with ICFAI and its affiliates is given an option of registering under the scheme for securing a placement, on completion of the course. In order to register under the scheme, a student had to fill-up a separate application form and pay a prescribed fee. The application form and the fee are collected by ICFAI at the time of enrolment to the course, and are later passed on to Alchemist. Although the placement fee is received by Alchemist from the students in advance at the time of enrolment to the course, the actual activity of providing a placement to the student is done after completion of course by the students.

3. Coming to a conclusion that this activity is taxable, show cause notice dated 24.11.2009 was issued for the demand of the service tax liability by invoking extended period under the category of 'manpower recruitment services'. Appellant contested the show cause notice on merits stating that they are engaged only in the activity of arranging placements for students who have completed the courses conducted by the Institute of Chartered Financial Analysts of India (ICFAI) and its

affiliates under the scheme; a student has an option of not registering under the scheme for securing placement on completion of the course; the application form and the fee collected by ICFAI at the time of enrolment to the course and are later passed on to appellant, the actual activity of providing the placement to the student is done after completion of the course and on limitation that the entire activity was known to the Revenue authorities as they stopped payment of the tax by informing the Revenue authorities on the same. The adjudicating authority after following due process of law confirmed the demands raised along with interest and also imposed penalties.

4. Learned Counsel appearing for the appellant after taking the Bench through the scope of the services 'manpower recruitment and supply agency services' submit that placement is an activity of finding a job for a person who is on the lookout for the employment, while recruitment is an activity rendered to an organisation which is on the lookout for suitable people to work for them. It is his submission that placement services is rendered to the prospective employee while recruitment is rendered to prospective employer and both services are distinguished from each other and the statute provides for discharge of service tax liability only on the recruitment services. It is his submission that CBEC circular dated 27.07.2005 also indicates the same. It is his further submission that similar issue came up before the Tribunal in the case of Motilal Nehru National Institute of Technology [2015 (40) STR 375 (Tri.- Del.)] and Sydenham Institute

of Management [2016 TIOL 1189 (CESTAT-MUM)], wherein the Bench took the view that tax liability will not arise on the amounts received as placement fees from the students as there is no recruitment services.

5. Learned Departmental Representative appearing on behalf of the Revenue submits that the students also are the clients of the appellant and the definition of the taxable service indicates that services rendered to a client are taxable i.e., in supply of manpower. He would submit that amounts received by the appellant were towards the supply of manpower to a client. He relies upon the decision of the Tribunal in the case of Shramik Kalyan Samiti [2017 (6) GSTL 466 (Tri.-Del.)] for the proposition that services in form of placements are services rendered to client.

6. On careful consideration of the submissions made by both sides and on perusal of records, it is noted that the facts are not disputed by both sides i.e., the appellant herein has been charging an amount as placement fees from the willing students enrolled by ICFAI. It is this amount of fees the Revenue wants to tax as tax under the category of “manpower recruitment and supply agency services”.

7. Undoubtedly the activity carried out by the appellant is a service of placement to the student, which indicates that appellant is helping the students of ICFAI to get a job. In our view, placement is an activity of finding the job for a person who is on the lookout of

employment and is service rendered to prospective employee which will not, get covered under the definition of "manpower recruitment and supply agency services". The activity that is sought to be taxed under the head 'manpower recruitment or supply agency services', is regarding recruitment and/or supply of manpower. We find that the Tribunal in the case of Motilal Nehru National Institute of Technology (supra) was considering identical issue wherein in para 5 and 6, the Bench held as under:

> *"5. The period in issue in the present appeal is 1-5-2006 to 31-3-2007. During this period, manpower recruitment or supply agency service was defined in Section 65(68) as any commercial concern/any person engaged in providing any service, directly or indirectly, in any manner for recruitment or supply or manpower, temporarily or otherwise, to a client. Section 65(105)(k) states that this service is a service provided or to be provided to any person, by a manpower recruitment or supply agency in relation to the recruitment or supply of manpower, temporarily or otherwise, in any manner.*
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> *6. From the definition and the enumeration of this activity as a taxable service, it is clear that what is taxable is the rendition of any service towards recruitment or supply or manpower, temporarily or otherwise to a client. The recipient of this service is a client who receives services in the nature of recruitment of supply of manpower, temporarily or otherwise. The recipient client must thus be an employer or prospective employer and the consideration for this service must flow from such employer to the provider of the service. The placement facilitation provided by educational institutions whereunder the placement charges are collected from students and not from an employer or a prospective employer, do not on a fair and reasonable interpretation of the taxable service as defined in the Act, fall outside the purview of either the definitional or enumerative provision of the Act."*

8. Similar issue came up before the Bench in the case of Sydenham Institute of Management (supra) [wherein one of us, M.V.Ravindran was a member] and it is noticed that following decision of the Tribunal in the case of Motilal Nehru National Institute of Technology, the

Bench held that amount collected from the students as placement fees is not taxable under 'manpower recruitment and supply agency services'.

9. In view of the facts and circumstances of this case, we find that the decision of the Tribunal in the case of Motilal Nehru National Institute of Technology and Sydenham Institute of Management covers the issue squarely in favour of the appellant herein. The reliance placed by the Learned Departmental Representative in the case of Shramik Kalyan Samiti will not carry their case any further, as the Bench specifically recorded a fact that Shramik Kalyan Samiti (appellant) had supplied manpower to their clients namely Bhopal Sahakari Dugth Sangh Maryadit for monetary consideration. These facts were considered by the Bench in the case of the Shramik Kalyan Samiti to come to conclusion as to what meaning should be attributed to the word 'client'.

10. It can be seen that the view expressed by the Bench in the case of Motilal Nehru National Institute of Technology and Sydenham Institute of Management are directly on the point, in dispute in this case.

11. Accordingly, following the ratio laid down by the Tribunal on an identical issue, we set aside the impugned order and allow the appeal on merits itself. Since, we have disposed of the appeal on merits, we

are not recording any observations on the various other points argued by both sides.

12. Impugned Order is set aside and the appeal is allowed.

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

(P.VENKATA SUBBA RAO)
MEMBER (TECHNICAL)

(M.V. RAVINDRAN)
MEMBER (JUDICIAL)

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