CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL REGIONAL BENCH AT HYDERABAD

Division Bench

Court – I

Appeal No. ST/636/2011

(Arising out of Order-in-Appeal No.89/2010 (H-II) S.Tax dated 30.11.2010 passed by CCCE & ST (Appeals-II), Hyderabad)

M/s Mind Q Systems Pvt Ltd
8-3-214/7, Srinivasa Nagar Colony (W),
S.R. Nagar, Hyderabad – 500 038 **……Appellant**

VERSUS

Commissioner of Customs, Central Excise & Service Tax, Hyderabad – II
Kendriya Shulk Bhavan, L.B. Stadium Road,
Basheerbagh, Hyderabad, Telangana – 500 004 **……Respondent**

and

Appeal No. ST/647/2011

(Arising out of Order-in-Appeal No.89/2010 (H-II) S.Tax dated 30.11.2010 passed by CCCE & ST (Appeals-II), Hyderabad)

Commissioner of Customs, Central Excise & Service Tax, Hyderabad – II
Kendriya Shulk Bhavan, L.B. Stadium Road,
Basheerbagh, Hyderabad, Telangana – 500 004 **……Appellant**

VERSUS

M/s Mind Q Systems Pvt Ltd
8-3-214/7, Srinivasa Nagar Colony (W),
S.R. Nagar, Hyderabad – 500 038 **……Respondent**

Appearance
Present for the Assessee: Shri K. Vijay Kumar, Advocate.
Present for the Department: Shri N. Bhanu Kiran, Authorized Representative.

Coram:
HON'BLE MR. P. VENKATA SUBBA RAO, MEMBER (TECHNICAL)
HON'BLE MS. RACHNA GUPTA, MEMBER (JUDICIAL)

FINAL ORDER No. A/30661-30662/2019

Date of Hearing: 04.06.2019
Date of Decision: 11.07.2019

[Order per: P. VENKATA SUBBA RAO.]

1. These two appeals are filed by the assessee and the department against the same impugned Order-in-Appeal No. 89/2010 (H-II) S.Tax dated 30.11.2010 and hence are being disposed of together.

2. The assessee is challenging the demand of service tax upon them and penalty imposed equal to the service tax for the period 01.07.2004 to 31.03.2008 in their appeal ST/636/2011 whereas the department is aggrieved by the first appellate authority allowing the assessee the benefit of notification 24/2004-ST dated 10.09.2004 read with notification 19/2005-ST dated 07.06.2005 for the period 10.09.2004 to 15.06.2005. According to the department the benefit of this exemption notification is not available to the assessee.

3. The facts of the case in brief are that the assessee herein is imparting commercial training or coaching services related to software and are registered with the Central Excise department and are filing periodical returns. Intelligence was gathered by the department that the assessee is not discharging service tax properly on the services rendered by them. Accordingly a search was conducted by the officers of Anti-Evasion, Service Tax, Hyderabad – II Commissionerate on 13.10.2008 and several documents were recovered. Examination of the documents, records and corresponding ST-3 returns filed by the assessee showed that the assessee has not disclosed the full value of the taxable services rendered during the period as follows:

Year	Value as shown in ST-3 Returns (in Rs,)	Value as shown in Balance Sheet	Taxable Value	Difference in taxable value
2004-05	898549	3494750	3179279.49	2272730
2005-06	511000	4652650	422005.44	3711005
2006-07	652818	10141973	9035970.24	8743429

4. Thereafter they recorded the statements of Shri M. Gopala Reddy, Managing Director of assessee firm and Shri Bhikshapathy, Chartered Accountant and questioned about the difference between the value of taxable services shown in the returns and that shown in the Balance Sheet. Shri Bhikshapathy confirmed that the amounts shown under the head

'Course fee' in their records was higher and it represented (a) the application fee, (b) registration fee, (c) sale of study materials and (d) examination fee and coaching fee. When asked if they were discharging service tax on the entire amount, he explained that they have not paid tax on amounts received from the students towards supply of materials on the ground that the same are exempted and therefore they have not discharged service tax on the full value. He also paid an amount of Rs.4,99,999/- during the investigation on 04.11.2008 towards service tax on the value not shown in their returns and agreed to work out the differential service tax and pay the same along with interest. Further examination of the records showed that the explanation of the assessee that they claimed exemption for the value of study materials appeared incorrect because they were raising a single invoice on the students for the services rendered and the amount collected is a composite amount for training and there is no separate cost of study materials or examination fee. It was further found that there is no price printed on the study materials provided by the assessee. During the present proceedings, learned counsel for the assessee showed us sample copies of the study materials and also agreed that there is no separate price printed on the study material. A show cause notice was issued to the assessee on 15.05.2009 demanding differential service tax along with interest and proposing to impose penalties under Sec.76, 77 & 78 of the Finance Act, 1994. This demand was confirmed vide Order-in-Original No. 37/2009 dated 17.08.2009. On appeal by the assessee, the Commissioner (Appeals), vide Order-in-Appeal No. 79/2009 (H-II) ST dated 27.11.2009, remanded the matter back to the original authority with a direction to pass the order after following principles of natural justice. In pursuance of this order, Order-in-Original No. 38/2010 (denovo) (S.Tax) dated 12.05.2010 was passed confirming the demand along with interest and imposing penalties under Sec.76, 77 & 78 of the Finance Act, 1994. Aggrieved by this order, the assessee appealed before the first appellate authority who, vide the impugned order, modified the order of the lower authority to the extent of allowing benefits of exemption notification 24/2004-ST dated 10.09.2004 read with notification 19/2005-ST dated 07.06.2005 for the period 10.09.2004 to 15.06.2005. This is the order which is under challenge in the present appeals.

5. After hearing both sides, we find that assessee has not discharged the service tax on the entire amount collected by them from the students under "Commercial Coaching and Training Services" claiming the following as exempted there from.

(1) Sale of books
(2) Registration fee
(3) Examination fee for examinations conducted by Indian Testing Board.

6. It is not in dispute that the sale of books is not a separate enterprise by the assessee. These books are supplied to the students as study materials. They are not priced separately. There is no separate invoice raised upon the students for the sale of books. The cost of the books is also part of the total cost of training rendered by the assessee. Similarly, registration fee and the examination fee claimed by the assessee are also not billed separately. There is no evidence that the examination fee collected by the appellant is an expense and corresponding amount has been paid by them to any Board conducting the examinations. All these deductions are reckoned by the assessee on their own, out of the gross amount collected from the students towards rendering training services. Hence, there is a difference between the amount which was actually collected by them from the students and the amount which was shown by the assessee in their ST-3 Returns on which service tax was paid.

7. During hearing, learned counsel for the assessee could not produce any evidence to show that the amounts on which they have not paid service tax were not part of the consolidated fee collected by them from the students for rendering commercial training and coaching services. It would have been a different case if the books in question were priced publications being sold separately under the invoice. There is nothing on record to show that the books in question are not even priced. Under these circumstances, we find the assessee is liable to discharge service tax on the entire amount collected from the students as fees for commercial training and coaching conducted by them. The next question to be decided is whether the first appellate authority was correct in holding that the assessee was entitled to

the benefit of notification 24/2004-ST dated 10.09.2004 read with notification 19/2005-ST dated 07.06.2005. This notification reads as follows:

"Exemption to vocational/recreational training institute for providing commercial training or coaching services

Notification No. 24/2004 ST

Dated 10-9-2004

[As amended by Notification No. 19/2005 ST dated 07-06-2005]

In exercise of the powers conferred by sub-section (1) of section 93 of the Finance Act, 1994 (32 of 1994), the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts the taxable services provided in relation to commercial training or coaching, by, -

(a) a vocational training institute; or

(b) a recreational training institute,

to any person, from the whole of the service tax leviable thereon under section 66 of the said Act.

[Provided that nothing contained in this notification shall apply to the taxable services provided in relation to commercial training or coaching by a computer training institute.]

Explanation. - For the purposes of this notification, -

(i) "vocational training institute" means an Industrial Training Institute or an Industrial Training Centre affiliated to the National Council for Vocational Training, offering courses in designated trades as notified under the Apprentices Act, 1961 (52 of 1961)
(ii) "recreational training institute" means a commercial training or coaching centre which provides training or coaching relating to recreational activities such as dance, singing, martial arts or hobbies.
(iii) "computer training institute" means a commercial training or coaching centre which provides coaching or training relating to computer software or hardware."

8. The proviso in the above notification was inserted with effect from 07.06.2005 excluding taxable services provided in relation to commercial training or coaching by a computer training institute. It is the case of the assessee that prior to the introduction of this proviso the benefit of this exemption was available to computer training institutes as well because they were not excluded. It is the case of the department that a plain reading of the notification prior to this amendment shows that the exemption was available only to (a) vocational training institute or (b) a recreational training institute. There was no exemption notification for computer training institutes at all. Therefore, the proviso which was introduced was nothing more than an explanation introduced vide notification 19/2005-ST dated 07.06.2005. To buttress their argument learned departmental representative also draws the attention of the bench to notification 09/2003

which was in existence prior to notification 24/2004. This notification exempted services provided in relation to commercial training or coaching by (a) vocational training institute, (b) a computer training institute or (c) a recreational training institute. Subsequent notification 24/2004-ST restricted the exemption only to vocational training institute and recreational training institute. There was no exemption notification for computer training institutes which, according to the department, is a conscious decision of the Government. The subsequent proviso introduced vide notification 19/2005 dated 17.06.2005 is only by way of explanation/clarification and even without the proviso no benefit was available for computer training institutes.

9. Learned counsel for the assessee, on the other hand, argues that the proviso was introduced with effect from 07.06.2005 specifically stating that the benefit of this notification is not available for commercial training or coaching by computer training institute. It was not an explanation but a proviso. The proviso cannot be presumed to exist prior to this date. In the absence of proviso the presumption is the benefit of notification extends to computer training institutes also. Therefore, they are fully entitled to the benefit of exemption notification. We do find that notification 09/2003-ST dated 20.06.2003 provided for exemption to a vocational training institutes, computer training institutes as well as recreational training institutes up to 30.06.2004. The successor notification 24/2004-ST dated 10.09.2004 provided such exemption only to vocational training institutes and recreational training institutes. Viewed from this point of view the proviso which was inserted excluding computer training institutes from the benefit of this exemption notification is redundant because computer training institutes were not covered at all in the notification. The other way of looking at it is to view the proviso as having made an exception to the notification with effect from 07.06.2005 when it was introduced. We, therefore, find that both views are possible in reading the exemption notification 24/2004-ST dated 10.09.2004 prior to 07.06.2005. As per the judgment of the Hon'ble Apex Court in the case of Dilip Kumar & Co. and others (Civil Appeal No. 3327/2007) an exemption notification must be strictly construed and in case of ambiguity the benefit of doubt has to go to the revenue and against the assessee. This is a case of glaring ambiguity created by inserting a proviso excluding the category which was not covered at all in the notification in the

first place. We have no choice but to follow the judgment of the Constitutional Bench of the Hon'ble Supreme Court in interpreting this notification and hold that the assessee is not entitled to the benefit of notification 24/2004-ST dated 10.09.2004 for the period prior to 07.06.2005 also because the computer training institutes were not covered by the notification. Therefore, the Commissioner (Appeals) has erred in extending the benefit of this notification to the assessee.

10 In view of the above, we find that the assessee is not entitled to deductions on account of sale of books, registration fee, examination fee etc., because no amounts were collected under these heads and gross amount for total services rendered were invoiced to the students by the assessee. Service tax is leviable on the gross amount charged. Assessee is also not entitled to the benefit of exemption notification 24/2004-ST dated 10.09.2004 for the period prior to 07.06.2005 because they were not clearly covered by the exemption notification. In view of the above, the department's appeal is liable to be allowed and the assessee's appeal is liable to be rejected and we do so.

11. The assessee's appeal is rejected and the department's appeal is allowed.

(Pronounced in the Open Court on 11.07.2019)

(P.VENKATA SUBBA RAO)
MEMBER (TECHNICAL)

(RACHNA GUPTA)
MEMBER (JUDICIAL)

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