IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL,
EAST REGIONAL BENCH : KOLKATA

Service Tax Appeal No.77668 of 2018

(Arising out of Order-in-Appeal Nos.250/S.Tax II/Kol/2018 dated 26.03.2018 passed by Commissioner (Appeals) of CGST & Excise, Howrah)

M/s Academy for Professional Excellence
2/1C, Townshend Road, Bhawanipore, Kolkata-700025

Appellant

VERSUS

CGST & Excise, Howrah
15/1 Strand Road, Kolkata 700001

Respondent

Appearance:

Shri Rajeev Agarwal, C.A. for the Appellant
Shri D.Halder, Authorized Representative for the Respondent

CORAM:
HON'BLE SHRI P. K. CHOUDHARY, JUDICIAL MEMBER
HON'BLE SHRI BIJAY KUMAR, TECHNICAL MEMBER

FINAL ORDER NO…76925/2019

DATE OF HEARING : 22.10.2019
DATE OF DECISION : 22.10.2019

PER P.K.CHOUDHARY :

The instant appeal has been filed by assessee against Order-in-Appeal dated 26.03.2018 passed by the Ld. Commissioner (Appeals), CSGT & Central Excise, Kolkata, in the appeal filed against Order-in-Original dated 30.01.2017 whereby the Ld. Jt. Commissioner, Kolkata, has confirmed demand of service tax of Rs.92,23,936/- alongwith interest and imposed penalty for the period 2008-09 to 2011-12.

2. Briefly stated the facts of the case are that the appellant is an Authorised Learning Centre ("ALC") of the Sikkim Manipal University and is engaged in imparting education to the students for degree courses conducted by University under the Distance Education Programme approved by the University Grants Commission.

Proceedings were initiated by SIV, Kolkata, and a Show Cause Notice dated 21.10.2013 was issued to raise demand of service tax under the head "Support Services of Business and Commerce" for the period April 2008 to March 2012. The Ld. Jt. Commissioner after following the due process of law confirmed the demand which has been upheld by the Ld. Commissioner (Appeals) against which the assessee is in appeal before us.

3. Sri Rajeev Agarwal, C.A., appeared for the appellant and Sri D. Halder, Ld.Departmental Representative, appeared for the Revenue.

4. (i) The Ld. CA for the appellant at the outset submitted that they are providing the education services on behalf of the University under the distance learning programme. The students are enrolled under the University only and the fees for the courses are directly paid to the University. The degree recognised by law is also granted by the University. The premises, recruitment of the resource personnel, conduct of the course and the requisite infrastructure support is to be provided by them in pursuance of the specific terms of the agreement. They in turn receive a share of the fees from the University which are their income.

4. (ii) He submitted that their case is squarely covered by the decesion of the Tribunal in the case of Commissioner of Service Tax, Kolkata v Six Sigma Educom & Others [2018 (9) GSTL 199 (Tri-Kolkata)] wherein the Departmental appeal was dismissed. He pointed out to Para 6 of the said decision wherein the Tribunal noted that the Commissioner (Appeals) while allowing the appeal of assessee had relied upon the ratio laid down by the Hon'ble High Court of Kerala in the case of Malappuram Distt. Parallel Colleges Association v. Union of India [2006 (2) S.T.R. 321 (Ker.)] [followed by the Tribunal in the cases of M/s. JMC Educational Trust v. CCE, Trichy - 2011-TIOL-410-CESTAT and Trichy Institute of Management Studies (P) Ltd. v. CCE, Trichy, 2011-TIOL-1521-CESTAT] where it is observed that service tax

in respect of the infrastructure support facility and services incidental thereto is not attracting the levy of service tax especially when the University is approved by the UGC, DEC & AICTE.

4. (iii) He further submitted that the impugned demand of service tax has been levied under the head "Support Service of Business and Commerce" as defined in Section 65(104c)/Section 65(105) of the Finance Act, 1994, for the period prior to the negative list regime. He invited our attention to the fact that the Ld. Adjudicating Authority in Para 9.4 has agreed that the Learning Centres run by appellant were indeed for providing services of educational training or coaching programmes and such services were essential part of the courses by the recognised University that lead the student to obtain degree recognised under law. It is also his submission that the services are principally education services. The infrastructural support and other activities carried on by the appellant are purely incidental to carrying out the principal activity of imparting education through the distance mode of learning.

4. (iv) He further submitted that once a service has been specifically excluded from a legislated service category, the Department cannot levy tax on such excluded category of services under any other service head. He relied on the following judicial decisions :-

- Dr. Lal Path Lab Pvt Ltd v Commr. Of C & Ex, Ludhiana [2006 (4) STR 527(Delhi)]
- Commr. Of C & Ex, Ludhiana v Dr. Lal Path Lab Pvt Ltd [2007 (8) STR 337 (P& H)]
- Federal Bank Ltd v Commr. Of C. Ex,Cus & ST(Appeals) [2009 (15) STR 279 (Tri- Bang)]
- Federal Bank Ltd v Commr. Of C. Ex, Cochin [2010 (18) STR 279 (Tri- Bang)]

He also contested the demand on time bar and also submitted that penalty could not be imposed in absence of suppression.

5. Sri D.Halder, appearing for the Revenue, supported the findings made by the Ld Commissioner (Appeals) and submitted that the appellant has provided infrastructural support services to the University and hence the demand is rightly made in the category of Support Service for Business and Commerce. He submitted that the decision relied by the appellant in the case of Six Sigma Educom (Supra) as well as other cited decisions pertained to demand raised in the category of Commercial Coaching Centre services and hence distinguishable having no application in the instant case. He accordingly prayed that the appeal be rejected being devoid of merit.

6. Heard both sides and perused the appeal records.

7. The issue that is required to be decided is whether the appellant operating as Learning Centre for Sikkim Manipal University can be made liable to service tax under the category of Support Services of Business and Commerce.

8. We find that the Sikkim Manipal University is a recognised university under UGC and is certainly not doing any business activity but providing education services and these facts are not in dispute. The similar services carried on the appellant, being identical services to that of the university, cannot by any stretch of imagination be classified under support services of business when the service provided by the University is not a business activity itself. We agree with the contentions raised by the appellant that the parallel institutes imparting degree courses recognised by law are clearly excluded from the service category of "Commercial Training or Coaching Centre" as has been held by the Hon'ble Kerala High Court in St. Antony's Educational and Charitable Society v Union of India [(2006) 1 STR 137 (Kerela)] and the Tribunal's Bangalore Bench in Tandem Integrated Services [(2010) 20 STR 469]. Thus, the classification under the head "Support Services of Business and Commerce" is per se incorrect as

education services can neither be treated as a "Business" nor as "Commerce" and therefore, the impugned demand is not sustainable.

Moreover, we also agree with the arguments advanced by the Ld. CA that once a particular service has been specifically excluded from a particular taxing entry, the same cannot be classified under any other service category to raise demand of service tax. The said views have consistently been taken by the Tribunal in the case Dr. Lal Path Lab Pvt Ltd v Commr. Of C & Ex, Ludhiana (Supra) as also by the Hon'ble High Court in case of Dr. Lal Path Lab Pvt Ltd which has been reported as 2007 (8) STR 337 (P& H).

9. In view of above discussions, the impugned demand cannot be sustained and hence, set aside and the appeal is allowed with consequential relief as per law.

(Operative part of the order was pronounced in the open Court)

Sd/

(P. K. Choudhary)
Member (Judicial)

Sd/

(Bijay Kumar)
Member (Technical)

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