IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, KOLKATA

REGIONAL BENCH – COURT NO.1

Service Tax Appeal No.75845 of 2016

(Arising out of Order-in-Original No.05/Commr./ST/GHY/2015-16 dated 30.10.2015 passed by Commissioner of Central Excise & Service Tax, Guwahati)

M/s Central IT College
(Dr.R.P.Road, Ganeshguri, Guwahati-781006, Assam)

Appellant

VERSUS

Commissioner of Central Excise & Service Tax, Guwahati
(Sethi Trust Building, 5th Floor, G.S.Road, Bhangagarh,Guwahati-5)

Respondent

APPERANCE :

Shri Devaraj Sahu, Advocate for the Appellant
Shri S.K.Mukim, Authorized Representative for the Respondent

CORAM:
HON'BLE MR.ASHOK JINDAL, MEMBER (JUDICIAL)
HON'BLE MR.K.ANPAZHAKAN, MEMBER (TECHNICAL)

FINAL ORDER NO.77147/2024

DATE OF HEARING : 26.09.2024
DATE OF DECISION : 26.09.2024

Per Ashok Jindal :

The appellant is an appeal against the impugned order wherein the demand of service tax has been confirmed under the category of "Commercial Training or Coaching Centre" for the period April, 2009 to October, 2013 to the tune of Rs.1,66,01,169/- along with interest and various penalties under the Finance Act, 1994.

2. The facts of the case are that the appellant is a learning centre in Sikkim and Manipal and engaged in providing various educational students programmers conducted by Sikkim Manipal University under Distance Education Programme as approved by UGC.

2.1 The proceedings were initiated against the appellant and therefore, the show-cause notice dated 10.10.2014 was issued to the appellant to demand service tax under the category of "Commercial Training or Coaching Centre" for the period April, 2009 to October, 2013 by invoking extended period of limitation.

2.2 The matter was adjudicated. The demand of service tax was confirmed.

2.3 Aggrieved from the said order, the appellant is before us.

3. Today, when the matter was called, the ld.Counsel for the appellant submits that the said issue has already been settled by this Tribunal in the cases of Academy For Professional Excellence Vs. Commissioner of CGST & Excise, Howrah reported in 2020 (37) GSTL 334 (Tri.-Kolkata) and Asian School of Media Studies Vs. Commissioner of Central Goods & Services Tax, Noida reported in 2023 (68) GSTL 161 (Tri.-All.). He also relies on the decision of this Tribunal in the case of Great Lakes Institute of Management Limited Vs. Commissioner of Service Tax, Chennai reported in 2013 (32) STR 305 (Tri.-LB).

4. The ld.A.R. for the Revenue, reiterated the findings of the impugned order.

5. Heard both the parties and considered the submissions.

6. Considering the facts that on identical facts, another institute was also imparting education to the students through distance education programme approved by the University Grant Commission (UGC). In the case of Academy For Professional Excellence (supra), this Tribunal has held as under :

*"**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) S.T.R. 137 (Kerala)] and the Tribunal's Bangalore Bench in Tandem Integrated Services [2010 (20) S.T.R. 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 of 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 in 2007 (8) S.T.R. 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."*

7. Following the above decision, we do agree with the same as the Sikkim Manipal University is a recognized University under UGC and is not doing any business activity, but providing education services and these facts are not in dispute. Therefore, the service provided by the University is not the business activity itself and is not liable to service tax under "Commercial Training or Coaching Centre" services.

8. In view of this, the appellant is not liable to pay under the category of "Commercial Training or Coaching Centre" services. Accordingly, the demand against the appellant is not sustainable. Consequently, no penalty is imposable on the appellant.

9. In the result, we set aside the impugned order and allow the appeal filed by the appellant.

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

(Ashok Jindal)
Member (Judicial)

(K.Anpazhakan)
Member (Technical)

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