IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
EASTERN ZONAL BENCH : KOLKATA

REGIONAL BENCH – COURT NO. 1

Service Tax Appeal No. 76219 of 2016

(Arising out of Order-in-Appeal No. 05/ST-II/KOL/16-17 dated 13.04.2016 passed by the Commissioner of Central Excise (Appeals-II), Kolkata, Bamboo Villa, 3rd Floor, 169, A.J.C. Bose Road, Kolkata – 700 014)

M/s. FIITJEE Limited **: Appellant**
234/2A, A.J.C. Bose Road,
3rd Floor, The Millenium,Kolkata – 700 200

VERSUS

Commissioner of Service Tax **: Respondent**
Service Tax-II Commissionerate,
Kolkata

<u>APPEARANCE</u>:

None for the Appellant

Smt. K. Kalpana, Authorized Representative for the Respondent

<u>CORAM</u>:

HON'BLE SHRI R. MURALIDHAR, MEMBER (JUDICIAL)
HON'BLE SHRI K. ANPAZHAKAN, MEMBER (TECHNICAL)

FINAL ORDER NO. 77588 / 2024

DATE OF HEARING / DECISION: 18.11.2024

ORDER: [PER SHRI K. ANPAZHAKAN]

M/s. FIITJEE Limited, 234/2A, A.J.C. Bose Road,3rd Floor, The Millenium, Kolkata – 700 200 (hereinafter referred to as the 'Appellant') has filed this appeal against the Order-in-Appeal No. 05/ST-II/KOL/16-17 dated 13.04.2016 passed by the Commissioner of Central Excise (Appeals-II), Kolkata. In the impugned order, the Ld. Commissioner (Appeals) has upheld the demand of Service Tax confirmed on sale of books provided for training and coaching of students, under the category of 'commercial training and coaching service' during the period from January 2008 to March 2009.

2. The facts of the case are that the Appellant has rendered the service of coaching and training of students. During the course of providing such coaching and training service, the Appellant provided different sets of books to such students to aid them in preparing for competitive examinations. Prices of the books are clearly indicated in the brochures and it is mentioned that no Service Tax would be charged on the sale value of the books.

2.1. The Department has considered the value of the books sold by the Appellant as includable in the taxable value received for the purpose of rendering the services of coaching and training services. Accordingly, Service Tax was demanded, along with interest and penalties, which came to be confirmed by the ld. adjudicating authority vide the Order-in-Original No.45/JC/ST/Kol/2010-11 dated 30.07.2010. On appeal, the Ld. Commissioner (Appeals) has upheld the confirmation of the said demands vide the impugned order.

2.2. The present appeal has been filed against the impugned order upholding the confirmation of demands against the Appellant.

3. The Appellant submits that the books were supplied to the students separately in addition to the coaching services rendered by the. The prices of such books were clearly indicated in the brochures wherein it had been clearly mentioned that no Service Tax would be charged on that amount. The Appellant submitted that the Service Tax has been charged only on the tuition fees, administration fees, etc., collected for the coaching and training services rendered. Accordingly, it is the contention of the Appellant that the price of the books/study materials is not liable to

be included in the taxable value of 'commercial training and coaching services' rendered.

3.1. In the Grounds of appeal, the appellant submitted that apart from the students enrolled with them, the books and study materials were also available to non-enrolled students; the price charged from non-enrolled students is different from the price charged from enrolled students on account of discounts offered to the enrolled students.

3.2. It is their contention that they had been discharging Service Tax on the tuition fees charged from the students by claiming exemption under Notification No. 12/2003-S.T. dated 20.06.2003 towards the sale value of study materials or books to the students.

3.3. The Appellant further submitted that sale of books were exempt from the levy of VAT during the impugned period in the State of West Bengal; the study materials were compiled and printed by the Appellant themselves and hence, no excise duty is payable; they did not avail any CENVAT Credit in respect of the books/study materials sold to the students.

3.4. In the grounds of appeal, the appellant further submits that the issue is no longer *res integra* in view of the decision of the Tribunal, New Delhi in the case of their own Branch in New Delhi, wherein it has been held that the value of the books sold to the students is not includable in the assessable value and thus not liable to Service Tax *[ref. FIITJEE Ltd. v. Commissioner of Service Tax, New Delhi (Final Order No. 50512 of 2017 dated 23.01.2017 in Service Tax Appeal No. 1355 of 2010 – CESTAT, New Delhi)].*

3.5. In view of the above, the Appellant submitted that the demand of Service Tax confirmed on account of sale of study materials or books to the students is not leviable to Service Tax under the category of 'commercial training and coaching service' and accordingly, they have prayed for setting aside the demands confirmed in the impugned order.

4. The Ld. Authorized Representative of the Revenue reiterated the findings in the impugned order.

5. None appeared on behalf of the appellant. However, as the issue involved is in a narrow compass, we take up the issue for decision on the basis of available records. We have heard the Ld. Departmental Representative and perused the appeal records.

6. We observe that the Appellant has been rendering commercial training and coaching services. As a part of this service, they were also selling books/study materials to the students. The prices of the books were printed on the said books. We also find that these books were available for sale not only to students enrolled with the Appellant, but also to other students who were not enrolled. The only difference is that the books are being sold at a concessional rate to the enrolled students.

7. We find that the Appellant is liable for payment of VAT for the sale of such books. However, as the sale of books was exempt from levy of VAT in the State of West Bengal during the impugned period, they were not paying VAT thereon. Accordingly, we find that the Appellant is eligible for the benefit of Notification No.12/2003-S.T. dated 20.06.2003 which

excludes the value of books/study materials sold from the taxable value. For the sake of ready reference, the above Notification is reproduced below: -

> "Notification No. 12/2003-S.T., dated 20-6-2003 "
>
> In exercise of the powers conferred by 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 so much of the value of all the taxable services, as is equal to the value of goods and materials sold by the service provider to the recipient of service, from the service tax leviable thereon under section (66) of the said Act, subject to condition that there is documentary proof specifically indicating the value of the said goods and materials.
>
> 2. This notification shall come into force on the 1st day of July, 2003."

7.1. From the notification reproduced above, we observe that the value of materials supplied on which VAT is paid or payable, is not includable in the assessable value for the purpose of computing the service tax liability. In this case, it is not in dispute that VAT is payable on the books sold by the appellant, even though it is exempted in the state of West Bengal. Accordingly, as per the Notification 12/2003-ST dated 20.06.2003, we hold that the value of books sold is not includable in the assessable value for the purpose of computing the service tax liability of the appellant.

8. We also find that the issue is no longer res integra as the Tribunal, New Delhi has already decided the issue in favour of the Appellant in the case of *FIITJEE Ltd. v. Commissioner of Service Tax, New Delhi [Final Order No. 50512 of 2017 dated 23.01.2017 in Service Tax Appeal No. 1355 of 2010 –*

CESTAT, New Delhi]. The relevant portion of the said order reads as under: -

> *"5. The appellants are providing taxable service under the category of"Commercial Coaching and Training" and were discharging service tax on thesame. The dispute in the present case is relating to abatement in terms ofnotification no.12/03-ST towards the amount received on supply of studymaterials, books/kit. We have perused some of the documents submitted by theappellant to support their claim that they have separate receipt for supply of booksand study materials indicating the price clearly. We have also noted that theyhave sold such study materials /books to non-registered students. Their prospectusadvertising for various coaching programmes clearly mentions the price of booksand study materials. In such factual scenario, we find that the appellant's claim forexemption under notification no.12/03-ST cannot be rejected. Ld. Counsel for theappellant confirmed that there is no question of their availing any cenvat credit onsuch books and study materials as there is no tax paid on any of them. We find theimpugned order denying the benefit of notification no.12/03-ST is not legallysustainable. In this regard, we also rely on the decisions of the Tribunal in thecases of Cerebral Learning Solutions Pvt. Ltd. – 2013 (32) STR 379 (T-D),Chate Coaching Classes Pvt. Ltd. – 2013 (29) STR 138 (T-M), Pinnacle – 2011 (24) STR 453 (T-D) and Mastermind Classes Pvt. Ltd. vide Final OrderNo.53685/2015 dated 19.11.2015."*

9. In view of the above discussion and by relying upon the decision cited supra, we hold that the Appellant is not liable to pay Service Tax on the sale value of the books/study materials sold, under the category of 'commercial training and coaching service'. Since the demand itself is not sustainable, the question of demanding interest or imposing penalty does not arise.

10. Accordingly, we set aside the demand confirmed in the impugned order and allow the appeal filed by the Appellant with consequential relief, if any, as per law.

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

Sd/-
(R. MURALIDHAR)
MEMBER (JUDICIAL)

Sd/-
(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

Sdd