

**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
WEST ZONAL BENCH AT MUMBAI
COURT NO.**

Appeal No. ST/87833/2014

(Arising out of Order-in-Original No. PUN-EXCUS-003-COM-054-13-14 dt. 31.3.2014 passed by the Commissioner of Central Excise & Service Tax, Pune-III)

Chanakya Mandal Pariwar : Appellant

VS

Commissioner of Central Excise Pune-III : Respondent

Appearance

Shri Sagar Shah, C.A. for Appellant

Shri Dilip Shinde, Asstt. Commr. (A.R) for respondent

CORAM:

Hon'ble Shri Ramesh Nair, Member (Judicial)

Hon'ble Shri Raju, Member (Technical)

Date of hearing : 04/01/2018

Date of pronouncement : 22/03/2018

ORDER NO...A/85719 / 2018

Per : Ramesh Nair

The brief facts of the case are that the Appellant is a Public Charitable trust and running classes for graduation courses for the students through Yashwantaro Chavan Open University (YCMOU). They are also providing coaching for preparation of competitive exams conducted by the UPSC and MPSPC. They were issued show cause notice alleging that the services of the Appellant except imparting education of graduation courses would fall under the category of "Commercial Training and Coaching Institute" and hence liable for

service tax. The demands were confirmed by the adjudicating authority on the ground that the YCMOU is an open university and is basically a distance learning mechanism, in which the students are not expected to attend any specific college/ institute. Therefore the certificates/ degrees issued by YCMOU are issued as independent certificate/ degrees and do not establish that the subject courses are conducted in the institute of the Appellant. The Appellant is preparing only candidates for appearing in various examinations in order to clear the examinations conducted by the YCMOU. They are also engaged in imparting skill or knowledge or lessons to the candidates for clearing competitive examinations conducted by the UPSC/MPSC. Therefore both activities carried out by them does not get covered in the category of courses recognized by the law and hence the activities carried out by them fall under the category of Commercial Training and Coaching Services. The course conducted by the Appellant are carrier guidance and Entrepreneur Development, Preparing youth for all types of competitive exams, test Series, English Speaking Course etc. which cannot be called vocational. He relied upon the Tribunal order in case of Pasha Educational Training Institute 2009 (19) STT 129, Sunwin Techno Solutions Pvt. Ltd. and Wigen & Leigh College India Ltd 2008 (12) STT 157. He also relied upon the order in case of Prof. Ulhas Vasant Bapat 2015 (37) S.T.R. 1034 (Tri. - Mumbai) wherein it was held that training in languages cannot be considered as vocational training. He also relied upon the order in case of Sadhna Education and People Development Servcies Ltd 2013 – TIOL – 1830 – CESTAT – MUM wherein the courses were

held to be not of vocational nature. He also relied upon Circular No. 107/01/2009 – ST dt. 28.01.2009. Hence the present appeal.

2. Shri Sagar Shah, Ld. CA appearing for the Appellant submits that educational courses imparted by them are not liable for service tax. He submits that they are imparting education for the graduation course and the students are getting degree from the recognized university in this case Yashwantrao Chavan Maharashtra Open university. In terms of the agreement with the YCMOU they are a study centre for graduation and other degree/ diploma courses run by the university and also produced the copy of the agreement. He has also produced the degree certificate of the students where the Appellant's name and code number is appearing as a study center. In reference to imparting education towards competitive exams conducted by the UPSC/MPSC etc. he submits that such education is also provided to the students as per the agreement between the university and themselves. That as per the definition of "Commercial Training or Coaching Centre" if any institutes provides both the courses i.e one recognized by the law, even than the autonomus courses which are not recognized by the law will not attract service tax, since the entire institute is outside the scope of "Commercial Training or Coaching Centre". He relies upon the CBEC Circular No. 59/8/2003 dt. 20.06.2003 contending that the CBEC has clarified as under :

Whether service tax is leviable on institutes providing commercial coaching in addition to recognized degree courses :

Some institutes like colleges, apart from imparting education for obtaining recognized degrees/diploma/ certificates, also impart training for competitive examinations, various entrance tests etc. It is clarified that by definition, such institutes or establishments, which issue a certificate, diploma or degree recognized by law, are outside the purview of “commercial training or coaching institute”. Thus, even if such institutes or establishments provide training for competitive examinations etc., such services rendered would be outside the scope of service tax.

He also submitted that in view of above it is absolutely clear that they were not liable to any tax. That they were exempted from service tax till 01.05.2011 as apparent from the DOF 334/3/2011 – TRU dt. 28.02.2011. The excerpts of the said DOF is as under :

3. Commercial Training or Coaching Service [section 65(105)(zzc)] :

3.1 The levy in its present form keeps outside its purview unrecognized education which is imparted by an institute that issues any certificate or diploma or degree or any educational qualification recognized by law. Thus two identical courses may be treated differently merely because one of the institutes also conducts another course that is recognized by law. This anomaly is proposed to be corrected by subjecting all such unrecognized education to tax.

3.2 In the Finance Bill the definition of ‘commercial training coaching centre’ has been amended. Suitable exemption will be given after the enactment of the Finance bill to preschool coaching and training and to coaching or training relating to educational qualifications that are recognized by law.

He submits that from the above DOF it is absolutely clear that they are not liable for any taxes. He also submits that since there is

no element of suppression therefore the demand is hit by limitation of time also and also no penalty is imposable upon them.

3. Shri Dilip Shinde, Id. Assistant Commissioner, AR reiterates and supports the findings of the impugned order. He also submits an article on territorial jurisdiction on out of state Open university opening institutes in other States by entering into MOU.

4. We have considered the submissions made by both sides and gone through the facts of the case and the relevant documents produced before us. We find that the Appellant is imparting education in degrees courses as well as for competitive exams and other education programme in terms of agreement between the Yashwantrao Chavan Open University and the Appellant. The said university is recognized university and has appointed the Appellant as their study center. Clearly the Appellants are running parallel college for imparting education in degree/ diploma recognized by the law and cannot be differentiated with the other courses run by the regular courses. We have also seen the letter F1-52/2000(CPP-II) dt. 05.05.2004 issued by the Joint Secretary, University Grants Commission which clearly states that the Degrees/ Diplomas/ Certificates awarded by the Open University in conformity with the UGC notification on specification of degrees as equivalent to the corresponding awards of the traditional universities in India. Thus there is no doubt that the Appellant trust running courses are equivalent to regular courses of YCMOU and there cannot be any distinction between the regular colleges and the education imparted

by the Appellant. Hence we are of the view that in terms of CBEC Circular No. 59/8/2003 dt. 20.06.2003 the Appellant is not liable to service tax. Our views are also based upon the Tribunal's judgment in case of TANDEM INTEGRATED SERVICES 2010 (20) STR 469 (TRI) wherein the Tribunal held as under :

5.1 The undisputed facts in this case are that the respondents are recognized as a parallel college which is evident from the show cause notice and from the order-in-original. Revenue is also not disputing this fact as it can be seen from the grounds of appeal in para No. 2, which needs to be considered, if the activities conducted by the respondent in imparting the coaching or training to the students as parallel college will get benefit of the CBEC Circular dated 20-6-2003 or not.

5.2 We find that the Hon'ble High Court of Kerala in the case of Mallapuram District Parallel College Association v. UOI (supra) their Lordships have held as under :

"The next question to be considered is whether the definition clause contained in Section 65(27) of the Act which makes the service rendered by the petitioners taxable under Section 66(105)(zzc), is discriminatory and violative of Art. 14 of the Constitution of India. It is a settled position by series of decisions of the Supreme Court that taxing provisions should stand the test of constitutional validity with reference to Art. 14 of the Constitution of India also; see Federation of Hotel and Restaurant v. Union of India (1989) 3 SCC 634 and East India Tobacco Co. Ltd. v. State of A.P., AIR 1962 S.C. 1733. In order to appreciate the challenge against levy of service tax as discriminatory and violative of Art. 14 of the Constitution of India, the effect of levy has to be gone into. Counsel for the petitioners rightly contended that there is no provision in the Act prohibiting collection of service tax and service-provider is therefore entitled to collect service tax which in this case is from the students. Even if prohibition is introduced against collection of service, fee has to be increased without which the heavy burden of 10% tax cannot be paid is that case of the petitioners. In either case, the burden of service tax on education falls on the student community. It is in this

context that the validity of the provision has to be considered with reference to Art. 14 of the Constitution of India. As already stated students studying in the parallel colleges are students who are entitled to write the University examinations as private students. The curriculum prescribed for the examination and the degree certificate awarded to private students and students studying in regular colleges, whether aided or self-financed affiliated to University, are the same. Therefore there is no distinction between the two classes of students namely, the students studying in the colleges affiliated to Universities and private students who take coaching in parallel colleges to write the same examinations. While the students studying in affiliated colleges cannot be subjected to service tax along with tuition fees and other fees levied by the management of those colleges students, who are studying in parallel colleges will have to bear the service tax as an additional burden along with tuition fees and other charges collected by the management of parallel colleges. The main reason why many students cannot join regular colleges affiliated to Universities is economical. Further on account of limited number of seats available in the affiliated colleges, the less brilliant will have to look for coaching elsewhere and they end up in parallel colleges. It is also a well-known fact that in interior and remote areas of the State, poor students even if eligible for admission in regular colleges cannot afford out-station-study and they naturally go to parallel colleges. In fact counsel for the petitioners pointed out that many brilliant students who could not afford to go to regular colleges after study in parallel colleges have secured high ranks in the examinations conducted by the Universities. Therefore in most cases, students landing in parallel colleges are the less fortunate ones who are compelled to join parallel colleges for economic reasons. It is worthwhile to note that the State Government after appreciating these realities have granted the same concession in bus fare granted to regular college students, to students in parallel colleges also. Financial benefits are provided to students from S.C. and S.T. community studying in parallel colleges also. Therefore, the State Government also treats the students in affiliated colleges and parallel colleges as part of the same class. In any case there can be no distinction between

students undergoing private study in the parallel colleges and those undergoing course study in the regular colleges, so long as the curriculum, the examinations written and the degrees obtained by them are one and the same. So far as the teaching staff rendering coaching rendered is concerned, it is common knowledge that appointments in private colleges whether aided or self-financed are made at the choice of the managements and not by relative merits of the applicants. In fact counsel for the petitioners rightly pointed out that those who start parallel colleges are mostly those who by virtue of their weak financial position are not able to secure jobs in regular colleges and they employ equally unfortunate ones as members of teaching staff. In other words, there may not be any qualitative difference in the coaching rendered in parallel colleges and in regular colleges. Even though counsel for the respondents submitted that by virtue of notification fixing the threshold limit of Rs. 4 lakhs-turnover for attracting service tax liability only big institutions are liable. I do not think any distinction can be drawn among parallel colleges based on turnover, because, the burden of service tax on the parallel colleges will have to be borne by the students, and the validity of charging section has to be tested against Art. 14 of the Constitution with reference to its effect on the beneficiaries, that is the students. In view of the findings above, I find no distinction between students undergoing private study in parallel colleges and those undergoing study in affiliated colleges whether aided or self-financed in the same subjects for writing the same examinations. Therefore levy of service tax for services rendered by parallel colleges which indirectly falls on the students, but by simultaneously providing exemption to regular affiliated colleges allowing the students therein study free of tax is patently discriminatory and violative of the Art. 14 of the Constitution of India. Though the service tax is in the Union list, since education happens to be in the concurrent list and considering the encouraging policy of the State Government to improve the educational opportunities of the students in the State, wherefrom large number of educated people migrate outside the State and outside the country seeking employment, the view of the State Govt. was called for by this Court. After referring

the matter to the Cabinet, the Under Secretary to Government has filed an affidavit in Court wherein he has stated that thought the State is helpless in regard to levy of service tax, the Government decided to bring it to the notice of the Central Government the difficulties experienced by parallel colleges in the matter of service tax. In the circumstances, it has to be assumed that the State Government is also in favour of exemption to the parallel colleges in the same way granted to regular colleges under the exemption in the definition clause. In view of the above findings, I hold that the impugned provisions of the Act authorizing levy of service tax on parallel colleges are arbitrary and violative of Art. 14 of the Constitution of India. However, I make it clear that the judgment is rendered on the peculiar facts applicable to parallel colleges in Keral and this is not to be treated as declaring the Section unconstitutional in so far as any other category of educational institution or training centre is concerned. The impugned proceedings in all the WP Cases are quashed and respondents are prohibited from demanding registration or service tax for the services rendered by petitioners, their members and other parallel colleges in Kerala.”

5.3 It can be seen from the above reproduced relevant portions of judgment that the parallel colleges in the State of Kerala should be at par with the other affiliated colleges in the State. It is undisputed in the case before us that the respondent is conducting parallel college in the State of Kerala. If that be so, the judgment of the Hon’ble High Court of Kerala in the case of Mallapuram District Parallel College Association v. UOI (supra) will squarely apply and the benefits as accorded to the regular colleges which are affiliated to University cannot be denied to the appellants.

5.4 It can be seen from the Circular dated 20-6-2003, more specifically at para 2.2.3, the Board has clarified as under :

“Certain doubts have been raised in case of commercial coaching and training. In this regard, the following is clarified, -

Whether service tax is leviable on postal coaching : It is clarified that service tax is leviable on any coaching or training provided by an institution on commercial basis. Therefore, the coaching provided by

postal means would also be covered under the service tax and the charges, including the postal charges collected for rendering this service would be subjected to service tax. Whether service tax is leviable on institutes providing commercial coaching in addition to recognized degree courses : Some institutes like colleges, apart from imparting education for obtaining recognized degrees/diploma/certificates, also impart training for competitive examinations, various entrance tests etc. It is clarified that by definition, such institutes or establishments, which issue a certificate, diploma or degree recognized by law, are outside the purview of “commercial training or coaching institute”. Thus, even if such institutes or establishments provide training for competitive examinations etc., such services rendered would be outside the scope of service tax.”

5.5 It can be seen from the above reproduced paragraph that the colleges apart from imparting education for obtaining recognized degrees/diploma/certificates, also impart training for competitive examinations, such institutes or establishments are outside the purview of “Commercial Training or Coaching Institute”. If the regular colleges affiliated to University are exempted from paying service tax for imparting training for the competitive examinations and various entrance tests etc., the respondent in this case being a parallel college, as is set out in Order-in-Original and grounds of appeal, we find that there is no reason for not extending the benefit of being outside the purview of the service tax under the category of “Commercial Training or Coaching” to the appellant. We find that the learned Adjudicating Authority’s findings on these points are correct and in consonance with the judgment of the Hon’ble High Court of Kerala. We are in agreement with the findings and we hold that the Adjudicating Authority’s order in respect of dropping the demand on “Commercial Training or Coaching Service” is correct, legal and does not suffer from any infirmity.

6. Since we have disposing the appeal on merits itself, we are not recording any findings on the point of limitation raised by both sides.

7. *In view of the above foregoing findings, the Revenue's appeal, to the extent it challenges the dropping of the proceedings by the Adjudicating Authority as regards the taxability under "Commercial Training or Coaching Service" is rejected.*

We find that the ratio of above judgment is absolutely applicable to the facts of the present case. Thus in view of the facts of the case as appreciated by us and the Tribunal judgment cited above, we hold that the Appellant is not liable for payment of service tax and therefore the impugned order is set aside.

5. The Appeal is allowed with consequential reliefs, if any.

(Pronounced in court on 22/03/2018)

(Raju)
Member (Technical)

(Ramesh Nair)
Member (Judicial)

SM.