# IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
## WEST ZONAL BENCH AT MUMBAI
## COURT No. I

**APPEAL No. ST/86842/2014**

(Arising out of Order-in-Appeal No. PUN-EXCUS-003-APP-363-13-14 dated 11.2.2014 passed by Commissioner of Central Excise (Appeals), Pune-III)

**Sadhana Educational & Empowerment Foundation** **Appellant**

Vs.

**Commissioner of Central Excise, Pune-III** **Respondent**

Appearance:

Shri Vikas Y. Khare, C.S., for appellant
Shri V.R. Reddy, Assistant Commissioner (AR), for respondent

**CORAM:**

**Hon'ble Mr. Ramesh Nair, Member (Judicial)**
**Hon'ble Mr. Raju, Member (Technical)**

Date of Hearing: 11.1.2018
Date of Decision: 10.5.2018

ORDER NO. **A/86361/2018**

Per: Ramesh Nair

Brief facts of the case are that the Appellant are engaged in providing commercial training and coaching service. The students of the institute are awarded certificate/ degree by IGNOU and the income so derived in relation to the same is exempted from service tax. However they are paying service tax on other educational courses. As they were availing cenvat credit therefore , they were paying an amount equal to 5%/6% in terms of Rule 6 (3) of CCR on exempted services. The had filed refund claim on account of excess service tax paid during the year 2011 – 12 on the ground that the tax was paid on estimated basis and also due to arithmetical error in making calculation of amount payable under Rule 6 (3) (b). They were issued show cause notice alleging that the claim was filed on 30.01.2013 while the payment of reversal was done on 21.01.2012 and therefore the claim has been filed after one year from the date of payment, hence time bar in terms of Section 11B of the Central Excise Act, 1944. Also that records for scrutiny of claim were not filed; the claimant did not discuss about exemption notification etc. The claim was rejected by the adjudicating authority on the ground that the total amount payable by the Appellant in terms of Rule 6 (3) (b) is Rs. 5,58,641/- whereas the Appellant had paid only Rs. 4,70,925/- and hence there is no question of payment of any refund claim. Also that the claim is time barred. The Appellant filed appeal before Commissioner (Appeals) who held that there are two broad reasons for claiming refunds paid by them in excess viz. some amount was refunded to the students and share of IGNOU was not required to be included in the value of exempted services paid by them was in excess . The amount refunded to the students has been excluded by the lower authority from the value of services, however the share of IGNOU was included. In terms of Section 67 of the Finance Act, 1994 the gross amount charged by the service provider is the value of services provided. In the present case the gross amount charged from the students shall be the value of services provided in respect of the courses of IGNOU and therefore the share of IGNOu cannot be excluded from the value of services. He thus held that there is no excess payment of taxes and consequentially no refund arises. He however held that the refunds are not time barred. The Appellant has filed the present appeal against the order of the Commissioner (Appeals).

2. Shri Vikas Chitnis, Ld. CS appearing for the Appellant submits that amount payable under Rule 6 (3) of CCR will be only with reference to Appellant's share of fees for IGNOU courses and only that amount shall be value of exempted service. That they have collected IGNOU's share from the students and remitting it lump sum to IGNOU. This modality has been laid down in the standard terms of the letter of acceptance prescribed by IGNOU. He also relies upon Tribunal order in case of CDAC Vs. CCE, Pune 2016 (41) STR 208 to state that the part of IGNOU share of revenue shall not be considered in value of service.

3. Shri V. R. Reddy, ld. AC, AR appearing for the revenue supports the findings of the impugned order.

4. We have gone thru the facts of the case and relevant provisions of law. We find that in terms of Section 67 (i) of the Finance Act, 1995 the value of service in case where the provision of service is for a consideration in money shall be the gross amount charged by the service provider for such service provided or to be provided by him. In the present case the services in question has been provided to the students by the Appellant. It is not the case that the students are directly remitting the fee to the IGNOU. The Appellant is collecting the fee and then remitting it to the IGNOU. The agreement between the Appellant and the IGNOU is of revenue sharing. However it does not ipso facto leads to exclusion of said amount remitted to the IGNOU from the purview of the consideration. Hence such amount is part of value of services. The order of Tribunal in case of CDAC supra is in context of scope/ classification of service as franchisee service which is not the issue here. The Appellant has received the amount from the students even if the same was shared with the IGNOU. Hence the whole amount would be considered as value of service. In such circumstances the whole consideration received by the Appellant is value of exempted service and the computation of 5/6% shall be made on such

value as rightly held by the lower Appellate authority. We thus do not find any infirmity in the impugned order. We therefore uphold the impugned order and dismiss the appeal filed by the Appellant.

(Pronounced in court on 10.5.2018)

**(Raju)**
**Member (Technical)**

**(Ramesh Nair)**
**Member (Judicial)**

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