

**IN THE CUSTOMS, EXCISE AND SERVICE TAX
APPELLATE TRIBUNAL
WEST ZONAL BENCH AT MUMBAI**

APPEAL NO: ST/87199/2013

[Arising out of Order-in-Original No: 25/P-III/ST/COMMR/2012-13
dated 25th February 2013 passed by the Commissioner of Central
Excise & Service Tax, Pune – III.]

National Insurance Academy

... *Appellant*

versus

Commissioner of Service Tax
Pune – III

... *Respondent*

Appearance:

Shri Yogesh Patki, Advocate for appellant

Shri M K Sarangi, Additional Commissioner (AR) for respondent

CORAM:

Hon'ble Shri S K Mohanty, Member (Judicial)

Hon'ble Shri C J Mathew, Member (Technical)

Date of hearing:

03/04/2018

Date of decision:

21/06/2018

ORDER NO: A/86770 / 2018

Per: C J Mathew

Proceedings were initiated *vide* notice dated 20th April 2012
against M/s National Insurance Academy for recovery of service tax
of ₹ 4,80,63,080/- on the consideration received for providing

‘commercial training or coaching service’ between October 2006 to March 2012, ₹ 19,47,042/- on the consideration for providing ‘management of business consultancy service’ between October 2006 to March 2009, of ₹ 19,50,393/- on consideration for providing ‘business auxiliary service’ between October 2006 to March 2012, ₹ 14,07,399/- on consideration for providing ‘convention service’ between October 2006 and March 2012 and ₹ 97,285/- on consideration for providing ‘renting of immovable property service’ between June 2007 and March 2011. Commissioner of Central Excise and Service Tax, Pune – III *vide* order-in-original no. 25/P-III/ST/COMMR/2012-13 dated 25th February 2013 confirmed the various demands, along with interest thereon, and imposed penalties under section 70, 77 and 78 of Finance Act, 1994. Aggrieved, the appellant is before the Tribunal seeking relief.

2. Appellant is a society registered under Societies Act, 1860 and Bombay Public Trust Act, 1950 with Life Insurance Corporation, General Insurance Corporation along with its four subsidiaries and the Government of India as members. The appellant offers various courses and the allegation pertaining to non-payment of tax on ‘commercial training or coaching service’ pertains to the fees charged from candidates registered for the ‘Masters in Business Administration’ programme. According to Learned Counsel for appellant the liability to tax does not arise as they are not in the

business of providing education but are a public institution in which Government of India and its insurance undertakings are owners.

3. Furthermore, it is his contention that they are recognised by the All India Council for Technical Education under the Ministry of Human Resources Development, Government of India as is evident from various mandatory approvals obtained by them and that the absence of affiliation to a university does not in any way alter their eligibility for exclusion from taxability in section 65(105)(zzc) of Finance Act, 1994 which merely requires recognition by appropriate authority and not necessarily a university. It is his further contention even if it was otherwise, the course, being one that prepares students for professional employment or self employment is a vocational course that was excluded from tax prior to 26th February 2010. According to Learned Counsel, the basis on which original authority confirmed the demand for the lack of approval from All India Council for Technical Education is not sustainable in view of the decision of the Hon'ble Supreme Court in *Association of Management of Private Colleges v. All India Council for Technical Education* [2013 (8) SCC 271] which held that Master of Business Administration not being a technical course that pre-requisite cannot be insisted on. Circular of Central Board of Excise and Customs dated 20th January 2009, relied upon by the original authority, was also held to be inapplicable in view of the decision of the Hon'ble Supreme Court in *Orient Paper*

Mills v. Union of India [1978 (2) ELT J345] to the effect that such circulars are not binding on the adjudicating authority. According to him, the need for recognition for affiliation to a university had been rendered unnecessary with the obtaining of approval from All India Council for Technical Education to offer the course till 2009-10. Relying on the decision of the Tribunal in *Ashu Export Promoters Pvt Ltd v. Commissioner of Service Tax, Delhi* [2012 (25) STR 359 (Tri.Del.)], *WLC College of India Ltd v. Commissioner of Service Tax, Delhi* [2012 (27) STR 377 (Tri.Del.)] and *IILM Film & Media School v. Commissioner of Service Tax, New Delhi* [2013 (32) STR 321 (Tri.-Del.)], Learned Counsel sought to lay claim to eligibility for exclusion as provider of vocational training education.

4. The adjudicating authority has rendered the findings that the appellant by conducting examination for the constituent member, renders ‘business auxiliary service’ and the consideration received thereon should be taxed under section 65(105)(zzb) of Finance Act, 1994. Learned Counsel submitted that the appellant and its members are not in a client-principal relationship and thus not liable to tax as provider of ‘business auxiliary service’ for which reliance is placed on the decision of Commissioner of Central Excise (Appeals), Mangalore in *re T. Sudhakar Pai* [2010 (18) STR 785 (Commr. Appl.)]. Appellant submits that the demand of tax on consideration for deployment of their infrastructure facilities was not correct as tax

liability had been discharged as provider of ‘convention service’. According to Learned Counsel, it cannot again be charged to tax as ‘mandap keeper service’. The dispute over taxability of ‘renting of immovable property service’, according to Learned Counsel, is pending before the Hon'ble Supreme Court and is therefore in jeopardy. Learned Counsel contends that the payments received from various entities for term projects undertaken by the students enrolled with the appellant have been wrongly subject to tax as there was no agreement to provide any service and these are merely the practical component of the curriculum.

5. Learned Authorised Representative contends that affiliation of the appellant to University of Pune is limited to the doctorate programme and mere recognition by that university for any programme does not qualify the master's programme to be excluded from tax. Learned Authorised Representative places reliance on the decision of the Tribunal in *Great Lakes Institute of Management Ltd. v. Commissioner of Service Tax, Chennai* [2008 (10) STR 202 (Tri. - Chennai)], *Sadhana Educational and People Development Services Ltd. v. Commissioner of Central Excise, Pune-III* [2014 (33) STR 575 (Tri. - Mumbai)], *Jay Ajit Charia v. Commissioner of Central Excise & Service Tax, Surat-I* [2015 (40) STR 1139 Tri. Ahm)] and *Balaji Society v. Commissioner of Central Excise, Pune – II* [2015 (38) STR 139 (Tri.Mum)].

6. On a perusal of the various decisions, it is seen that the consideration received from students enrolled for education are, owing to legislative intent, indeed taxable and that, to the extent of specific exclusion in the taxable entry, conformity with the description therein has to be strictly adhered to. That the appellant is a provider of training and coaching service is not disputed. Despite the inclusion of 'commercial' in the description of the taxable service, the absence of a profit motive, does not, of itself, alter the tax liability. It suffice that earnings are received for an activity to be commercial. Non-availability of an affiliation for the award of a degree at the end of the course it takes the activity out of the exclusion.

7. *In re Sadhana Educational and People Development Services Ltd.*

'4. We have considered the rival submissions and given considerable thought to the issue. At the outset, we note that appellant is accepting that they are providing Commercial Coaching and Training Service. The dispute is limited to whether appellant's service is eligible for exemption under Notification No. 24/2004-S.T., dated 10-9-2004. Notification No. 24/2004-S.T., dated 10-9-2004 read as under :-

"In exercise of the powers conferred by sub-section (1) of 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 the taxable services provided in relation to commercial training or coaching, by -

- (a) a vocational training institute; or*
- (b) a recreational training institute,*

to any person, from the whole of the Service Tax leviable thereon under Section 66 of the said Act.

Explanation. - For the purposes of this notification, -

- (i) “vocational training institute” training or coaching that impart skills to enable the trainee to seek employment or undertake self-employment, directly after such training or coaching;*
- (ii) “recreational training institute” means a commercial training or coaching centre which provides training or coaching relating to recreational activities such as dance, singing, martial arts or hobbies.”*

Above notification exempts taxable service provided in relation to commercial training or coaching by a vocational training institute. Further, explanation in the said notification explains that “vocational training institute” means commercial training or coaching centre which provides vocational training or coaching that imparts skills to enable the trainee to seek employment or undertake self-employment, directly after such training or coaching.

4.1 Ld. Advocate for the appellants have given lot of emphasis that graduates who were unemployed came to their institute underwent the two years course, and all the students on completion of course were employed by different organization or self-employed and hence their course is vocational and institute “Vocational Training Institute”. We are unable to agree with this contention, 100% employment or self-employment is not decisive factor to decide whether a course is vocational course and institute is vocational training institute. The explanation clearly states that a training or coaching should be vocational in nature and it should impart skills to seek employment or self-employment after such training. All professional degrees/courses helps in seeking employment but that does not make them vocational courses. For example, M.B.B.S. or M.D. or M.S. Course helps in seeking employment or self-employment but these cannot

be considered as Vocational Training. All Engineering Courses also helps in seeking employment but that does not make it vocational training. For example welding is a vocation but a post-graduate course in welding technology cannot be considered as vocational course.

5. We have gone through the content of the course, as submitted during arguments. It is seen the course is for a duration two years. The first year is common to all candidates. Thereafter they undergo summer training with some organization. In the second year, they undergo courses in one of the five disciplines/area of specialization viz. Financial Management, Human Resources, Management Manufacturing and Operations Management, and Systems Management.

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In the second year, courses though gets limited to the field of specialization but are again diverse, theory oriented and academic in nature. The content of courses can by no stretch of imagination can be called vocational. No doubt the two years course will help candidates in understanding various facets of management and get employment. It is a professional management course. This cannot be considered as Vocational Course that imparts skill to enable the trainee to seek employment or self-employment after the said course.

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9. We also note that Notification No. 24/2004-S.T., dated 10-9-2004 has been amended vide Notification No. 3/2010-S.T., dated 27-2-2010, wherein the Explanation relating to Vocational Training Institute is replaced by new definition. As per new definition, Vocational Training Institute means as

Industrial Training Institute or Industrial Training Centre affiliated to the National Council for Vocational Training, offering courses is designated trades as notified under the Apprentices Act, 1961 (52 of 1961). Though the said explanation was inserted in 2010, but indicates the scope of term vocational training in specific terms.'

the scope of exclusion of 'business administration' with the meaning of 'vocational training' was examined and rejected. The plea of Learned Counsel for eligibility to such exemption also fails. As far as rendering of 'business auxiliary service' by conducting of examination is concerned, we take note of lack of cogent finding on the scope of bringing such activity within section 65(19) of Finance Act, 1994, the appellant would have to promote a service provided by the client or provide any customer care service on behalf of the client. We are at a loss to appreciate the connection that conduct of an examination was with a third party as a recipient or the promotion of any activity of the constituent members.

8. It is clear from the submissions that appellant does not deny the use of their premises and their infrastructure facilities for various outside programmes. It is also not in dispute that the appellant had discharged the tax as provider of 'mandap keeper service'. Having thus accepted the liability to pay tax as provider of 'mandap keeper service' it is not open to Revenue to charge tax on the same consideration under a different category. The factum of renting of

such properties is not in dispute. Various claims for exclusion from tax in this category do not find favour.

9. As far as 'management and business consultancy service' is concerned, it is seen that the consideration was received by them for various reports submitted by their students to outside bodies on conclusion of various projects as part of curriculum of the course. Undoubtedly, these may be of use to the outside entity but they are not the product of a professional business consultant. Accordingly, the tax as provider of 'management and business consultancy' may not sustain.

10. Appellant has claimed that the bar of limitation would operate as there has been no suppression or misrepresentation on their part. Learned Authorised Representative counters by alleging that the appellant did conceal the fact of rejection of its application for affiliation despite which they continued to claim that they were in conformity with the exclusion clause in section 65(105). Reliance is placed on the decision of the Hon'ble High Court of Delhi in *Delhi Transport Corporation v. Commissioner of Central Excise & Service Tax* [2015 (38) STR 673 (Del.)]. While we are not inclined to accept the plea of the appellant that the decision of the Hon'ble Supreme Court about the nature of the course would take it out of purview of affiliation, it is clear that, as early as February 2006, the appellant had made a reference to the office of Commissioner of Central Excise,

Pune – III and in the reply thereof, by letter dated 10th February 2007, it has been clearly stated that the activities undertaken by the appellant are liable to tax as ‘commercial training and coaching service’. According to Learned Authorised Representative the appellant did not also pay heed to this direction and continued to evade its duty liability by engaging in correspondence. We find that the service tax authorities took cognizance of the activities and they have expressed their opinion that these are taxable. The demand on this count is, consequently, barred by limitation as the activity of the appellant was known, as was the non-payment of tax, and defiance is synonymous with misdeclaration or misrepresentation.

11. The appellant themselves having made a full disclosure of these circumstances to the service tax authorities and they were guided entirely about the tax liability exists; it cannot, by any stretch, be found that appellant had misrepresented to the competent authority. The scope for invoking the extended period under section 73(1) of Finance Act, 1994 does not exist. Clearly, the demand for the period beyond the normal period of limitation falls. Accordingly, the impugned order is modified and the duty liability restricted to such as pertain to the normal period.

(Pronounced in Court on 21/06/2018)

(S K Mohanty)
Member (Judicial)
*/as06041104

(C J Mathew)
Member (Technical)