CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL MUMBAI

WEST ZONAL BENCH

Service Tax Appeal No: 85696 of 2014

[Arising out of Order-in-Appeal No: NGP/EXCUS/000/APPL/931/13-14 dated 22nd November 2013 passed by the Commissioner of Customs, Central Excise & Service Tax (Appeals), Nagpur.]

School of Management Studies … ***Appellant***
226, Ground Floor, KT Nagar, Katol Road
Nagpur – 440 013

versus

Commissioner of Central Excise & Service Tax ***…Respondent***
Telangkhedi Road, Civil Line, Post Box No. 81,
Nagpur - 440 001

APPEARANCE:

Shri PV Sadavarte, Advocate for the appellant

Shri Dilip Shinde, Assistant Commissioner (AR) for the respondent

CORAM:

HON'BLE MR C J MATHEW, MEMBER (TECHNICAL)
HON'BLE MR AJAY SHARMA, MEMBER (JUDICIAL)

FINAL ORDER NO: A/87210 / 2019

DATE OF HEARING:	06/06/2019
DATE OF DECISION:	06/06/2019

PER: C J MATHEW

This appeal has been filed by M/s School of Management Studies against order-in-appeal no. NGP/EXCUS/000/APPL/931/13-14 dated

22nd November 2013 of Commissioner of Customs, Central Excise & Service Tax (Appeals), Nagpur in which the order of the original authority confirming demand of ₹ 4,45,756/- for the period from May 2009 to December 2011 as provider of 'commercial training and coaching service' has been upheld.

2. It would appear that the proceedings were initiated against the appellant, a proprietary concern, for having failed to discharge its tax liability on fees collected from students registered for the courses offered as franchisee of Candence Academy of Design, Nagpur, and not excluded from the taxable service thereby. It is submitted by Learned Counsel that the first appellate authority had failed to examine their submissions on merit which, according to him, is apparent in the assertion that

> *'8. I also find in this case that the appellant did not file any reply to show cause notice. They however appeared for personal hearing before the lower authority. Having not replied to the SCN to contest the charges levied in the said SCN, the appellant cannot claim at this stage that they have been denied natural justice. The lower authority had given them an opportunity to present the facts of their case and argue their merits in writing, which they have not availed for reasons best known to them.'*

3. It is seen that the disposal of the appeal lacks specific determination and that the claim of service tax having been discharged before the issue of show cause notice was also not considered by the

first appellate authority.

4. We have heard Learned Authorised Representative who asserted that the original authority had taken all the facts and submissions on record and that the appeal lacked merit.

5. As the detriment to the appellant has been finalized, admittedly, without ascertaining the veracity of the submissions and in the absence of reply to the show cause notice, we set aside the impugned order and remand the matter back to the original authority for a fresh decision after giving due opportunity to the appellant to reply to the notice and be heard in person.

(Pronounced in open court)

(C J Mathew)
Member (Technical)

(Ajay Sharma)
Member (Judicial)

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