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

APPEAL NO: ST/510/2012, ST/86404/2014 & ST/85637/2016

[Arising out of Order-in-Original No: 47-48/P-III/ST/COMMR/2011-12 dated 21st March 2012 and PUN-EXCUS-003-COM-042-13-14 dated 31st January 2014 passed by the Commissioner of Central Excise, Pune-III]

For approval and signature:

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

1.	Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	:	Yes
2.	Whether it should be released under Rule 27 of CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	:	Yes
3.	Whether Their Lordships wish to see the fair copy of the Order?	:	Seen
4.	Whether Order is to be circulated to the Departmental authorities?	:	Yes

Elixir Training Services Pvt Ltd … ***Appellant***

versus

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

Appearance:

Shri Bharat Raichandani, Advocate for appellant

Shri Roopam Kapoor, Commissioner (AR) for respondent

CORAM:

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

Date of hearing:	**05/09/2018**
Date of decision:	**11/01/2019**

ORDER NO: 85069-85071 / 2019

Per: C J Mathew

Three notices were issued to M/s Elixir Training Services Pvt Ltd who, admittedly, imparts sessions in English for consideration, demanding tax, as provider of 'commercial training and coaching' service listed in section 65 (105) (zzc) of Finance Act, 1994, for the period from 1st October 2004 to 31st March 2011, for 2011-12 and for 2012-14. The first and third notices were adjudicated in the first of the impugned orders-in-original no. 47-48/P-III/ST/COMMR/2011-12 dated 21st March 2012 and the other in order-in-original no. PUN-EXCUS-003-COM-042-13-14 dated 31st January 2014 of Commissioner of Central Excise, Pune-III confirming liability of 3,88,29,571 and 1,92,45,852 in the former and 1,05,16, 532 in the latter. Besides, interest was charged and penalties imposed all of which are under challenge in these three appeals which are disposed off by this common order.

2. The entirety of the demand straddles two epochs of the tax regime: that of enumerated, specific taxable service till June 2012 and that of the negative list, with attendant irrelevance of the definitions in section 65 of Finance Act, 1994, for the period thereafter. Moreover, the scheme of tax of this service had its inherent peculiarity with the dilemma of every self-respecting state abstaining from taxing education, especially when subsidized and state-run but extending even to for-profit, of its people while prescribing that fine line of distinction that separates education, with its noble connotation, from schooling that may well be capacity enhancing but, nevertheless, is for restricted satisfaction. The evolution of the coverage of tax under this category has been stilted and finds reflection in the claim of the appellant herein. We shall examine these aspects in our decision.

3. Besides the submission that appellants are not ‘training’ or ‘coaching’ to attract applicability of the definition in section 65(26) and section 65 (27) of Finance Act, 1994 but are in the business of ‘teaching’, Learned Counsel for appellant posits two grounds on which the confirmation of demand is challenged: that, English being a foreign language and because fluency therein is a skill that enhances job-appeal, the exemption available to vocational training under notification no. 24/2004-ST dated 10th September 2004 having wide

amplitude till the incorporation of restrictive amendment effective from 27th October 2010 and that, alternatively, the pursuit of ability to communicate English being an aspirational hobby should be deemed to be recreational training eligible for the attendant exclusion from tax afforded by notification no. 24/2004-ST. In addition, the appellant is also before us with the plea that there has been suppression on their part and that they had, by their letter informed the jurisdictional authorities of their activities which was not responded to, that the demand was fructified on the basis of information furnished by them, that the conducting of this course was in the public domain and that interpretation of law was the cause of this dispute. According to Learned Counsel, demand is, therefore, barred by limitation and penalty could not have been imposed.

4. Reliance is placed by him on the decision of the Tribunal in *British School of Language v. Commissioner of Service Tax [2017 (4) GSTL 212 (Tri-Del)]* and in *Actors Prepares v. Commissioner of Service Tax, Mumbai [2014 (33) STR 546 (Tri-Mumbai]*.

5. We have also heard the Learned Authorised Representative. He points out that the stand taken by the Tribunal in *Ulhas Vasant Bapat v. Commissioner of Central Excise, Pune-III [2015 (37) STR 1034 (Tri-Mumbai)]* has not been distinguished in the decision in *re British School of Languages* rendering it devoid of reliability as binding

precedent and that the decision in *re Actor Prepares* refers only to the prospective effect of the restrictive amendment to 'vocational training institute. He contends that the plea of the appellant is now solely that they are in the business of training persons in pursuit of their hobby which is not the subject of any of other the decisions cited, *viz.*, *Ashu Export Promoters (P) Ltd v. Commissioner of Service Tax, New Delhi [2012 (25) STR 359 (Tri-Delhi)]* and *Innovative Training Place (P) Ltd v. Commissioner of Service Tax, Delhi [2017 (5) GSTL 193 (Tri-Del)]*.

6. The service proffered by 'commercial training and coaching centres' were subject to tax with effect from 1st July 2003 but, at the same time, exempting 'vocational/computer/recreational training institutes' from the purview of tax. The scope of taxability of the service was examined by the Larger Bench of the Tribunal in *Great Lakes Institute of Management Ltd v. Commissioner of Service Tax, Chennai [2013 (32) STR 305 (Tri-LB)]* wherein it was held that, with the insertion of *Explanation* in 2010 with retrospective effect, section 65 (105) (zzc) of Finance Act, 1944 has undergone a sea change in its impact and admitting of no exceptions save that explicitly excluded by Parliament or deliberately exempted under the relevant powers devolving on the executive. Consequently, in relation to the present dispute, it is the extent of applicability of exemption notifications that would allow for a proper resolution.

7. The initial claim of the appellant is that ‘vocational training’ is the sphere of its activity. Even this, by their own admission and claim for coverage within the decision of the Tribunal in *re Actor Prepares*, would not benefit them for the period after March 2010. It would appear that acknowledging this frailty, the descriptional shift is now placed before us. Moreover, notwithstanding the decision in *re British School of Languages*, which did not consider the earlier, and more comprehensive decision, in *re Ulhas Vasant Bapat*, the limited period during which English was considered as a foreign language does not sustain the claim of the appellant to be ‘vocational training institute.’ The elaborate discussion in *re Ulhas Vasant Bapat* which also discards the acceptability of the clarification of Central Board of Excise & Customs on languages being ‘vocational’ suffices to discount that particular claim.

8. From inception, recreational training centres have been illustrated by reference to dance, singing, martial arts and hobbies. Not only is this claim for alternative benefit accorded to mutually exclusive categories repugnant to propriety expected of a training centre handling students but appears to have all the hallmarks of a shot in the dark without much effort at diligent aim. It is seen from the records that detailed submissions for such coverage was not made before the lower authority. The scope for inclusion among recreational training centre is question of fact and determined on establishing that

study of English is a hobby as claimed in the present appeal. We do not consider it appropriate for us to consider these submissions that would undoubtedly, have assisted the original authority in concluding that tax is leviable.

9. The submissions made on the plea for exclusion from the extended period of limitation and consequent penalty also requires careful consideration.

10. We, therefore, set aside the impugned orders and remand the matter back to the original authority to take a fresh decision in the light of our observations and, if any tax be, to consider the pleas made to invoke the limitation provision in section 73 of Finance Act, 1994.

(Pronounced in Court on 11/01/2019)

(Ajay Sharma)
Member (Judicial)

(C J Mathew)
Member (Technical)

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