IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

WEST BLOCK NO.2, R.K. PURAM, NEW DELHI-110066

BENCH-DB

COURT –IV

Service Tax Appeal No. ST/52804/2014-ST [DB]

[Arising out of Order-in-Appeal No. 249/ST/DLH/2013 dated 10.01.2014 passed by the Commissioner (Appeals) Central Excise Delhi-I.]

M/s. Bitcom Services P. Ltd. ...Appellant

Vs.

C.C.E., Delhi ... Respondent

Present for the Appellant : Mr. A.K Batra (CA) &
Mr. Vibha Narang (Adv.)
Present for the Respondent : Mr. G.R. Singh, (AR).

Coram: HON'BLE MR. C.L. MAHAR, MEMBER (TECHNICAL)
HON'BLE MS. RACHNA GUPTA, MEMBER (JUDICIAL)

Date of Hearing.07.08.2018
Pronounced on:_05.11.2018

FINAL ORDER NO. 53238/2018

PER: RACHNA GUPTA

The present appeal is directed against the Order of Commissioner Appeals bearing No. (188) dated 10.01.2014.

2. The relevant facts for the adjudication are that the appellants are engaged in providing Commercial Training and Coaching Services (CTCS in short) and are accordingly registered since 10.04.2008. Department on an intelligence gathered by their anti-evasion branch came to know that

the appellants have not discharged their liability for providing CTCS services for the period w.e.f. April 2004 to 30 September 2009. Resultantly, a show cause notice dated 22.04.2010 was served upon them raising the total demand of Rs. 32,40,478 under the following heads:

Particulars	**Taxable Value**		**Total Taxable Value**	**Service Tax**		**Total Service Tax**
	01.04.04	01.04.09 to 30.09.09		01.04.04 to 31.03.08	01.04.09 to 30.09.09	
Demand on income from Insurance Companies	1,36,88,687	10,16,999	**1,47,05,686**	16,38,853	1,04,751	**17,43,604**
Demand on income from Indira Gandhi National Open University (IGNOU)	21,38,177	89,700	**22,27,877**	2,39,376	9,240	**2,48,616**
Income from Punjab Technical University (PTU)	6,58,555	0	**6,58,555**	67,173	0	**67,173**
Income from Indian Institute of Hardware Technology (IIHT)	88,98,119	0	**88,98,119**	10,51,472	0	**10,51,472**
Bitcom Tuition Fee	5,16,638	0	**5,16,638**	63,786	0	**63,786**
Bitcom Computer Hiring Charges from IGNOU	2,47,065	0	**2,47,065**	30,537	0	**30,537**
Miscellaneous Income (Scrap sale, library charges etc.)	54,485	0	**54,485**	6,542	0	**6,542**
Demand on income not forming part of profit & loss account of the appellant-wrong calculation of service tax.	0	2,79,100	**2,79,100**	0	28,748	**28,748**
Total	**2,62,01,726**	**13,85,799**	**2,75,87,525**	**30,97,739**	**1,42,739**	**32,40,478**

The said demand was confirmed by the original adjudicating authority vide Order-in-Original dated 31.10.2012. An appeal was preferred before Commissioner Appeals who vide Order-in-Appeal dated 10.01.2014 i.e. the order under challenge has upheld order in original. Resultantly, the assessee is in present appeal.

3. We have heard Sh. A.K. Batra CA for the appellant and Sh. G.R. Singh Ld. DR for the Department.

4. There are 7 different heads for which respective demand has been raised (as detailed above), but for providing CTCS. Hence, foremost it is relevant to know the definition of CTCS:

> ***"Commercial Training or Coaching Centre"*** *means any institute or establishment providing commercial training or coaching for imparting skill or knowledge or lessons on any subject or field other than the sports, with or without issuance of a certificate and includes coaching or tutorial classes but does not include preschool coaching and training centre or any institute or establishment which issues any certificate or diploma or degree or any educational qualification recognised by law for the time being in force;*

The category wise arguments, observations and decisions are as follows:

Demand on income from insurance Co.:

On this account it is submitted on behalf of the appellant that there has been several decisions vide which the income from insurance Co. for rendering CTCS to their

agents is held to be out of tax. The **Bombay Flying Club Vs. Commissioner of Service Tax, Mumbai-II 2012-TIOL-841-CESTAT-MUM**, **Academy of Maritime Education And Training Trust Vs. The Commissioner of Service Tax, Chennai, 2014-TIOL-1327-HC-MAD-ST** & **M/s. National Institute Of Construction Management And Research M/s. MIT Institute of Design Vs. Commissioner Of Service Tax, Mumbai-II, Commissioner of Central Excise And Service Tax, Pune, 2017*TIOL-4131-CESTAT, Mum**. Ld. CA while relying upon these three authorities, has prayed for impugned demand to be set aside.

5. The ld. DR has conceded for the issue to have already been settled.

6. We have gone through the decisions as cited on behalf of the appellant. It is an admitted fact that to become the insurance agent it is mandatory in law for him to undergo a training program and thereafter to clear an exam conducted by Insurance Regulatory and Development Authority (IRDA). This Tribunal in the case of **NIS Sparta Ltd. Vs. Commissioner of Service Tax, New Delhi 2015-TIOL-209 (CESTAT, Del.)** has held that the training imparted to an insurance agency does not fall under the ambit of Section 65 (27) of the Finance Act, 1994 (an Act) as the said training is having the recognition of law and as such is covered under exclusion clause of Section 65(27) of

the Act. This Tribunal has gone through the various provisions of IRDA Regulation 2000 and it is observed that to become an insurance agent the candidate has mandatorily to go for practical training from the approved institute. In the present case the appellant is also approved by the IRDA to impart the said training. Therefore we are of the opinion that for while providing training to insurance agents the appellants are not providing the service of Commercial Training and Coaching Center Service. The income derived from such service is therefore not taxable. The similar opinion has also been formed by this Tribunal while hearing the plea of stay vide order dated 08.06.2016. Resultantly we are of the opinion that the demand of Rs. 17,43,604/- as levied by the Department against the appellant for providing the Commercial Training and Coaching Services to the insurance company has wrongly been confirmed by the adjudicating authority below the same is accordingly is set aside.

Demand on income from Indira Gandhi National Open University (IGNOU) and from Punjab Technical University (PTU)

It is submitted on behalf of the appellant that they are imparting training or education essential in obtaining degree course, certificate courses and training classes of IGNOU and PTU. Appellant is a credited institute with both the universities which are recognized by law. As such they fall under the exclusion clause of the taxable entry of

Commercial Training or Coaching Services. The accreditation certificates as enclosed are impressed upon. With respect to income from PTU it is submitted, in addition, that the appellants were not receiving any amount from the students who rather were paying the amount directly to the university. Above all the demand is not sustainable in view of the notification No. 10/2003 –NT dated 26.06.2003. Ld. CA has relied upon the authorities below:

- **Trichy Inst. Of Management Studies (P) Ltd. Vs. CCE Trichy 2011(22) STR 533 (Tri.–Chennai)**
- **Commr. Vs. Trichy Inst. Of Management Studies Vs. CCE, Trichy 2016(44) STR J162 (Mad.)**
- **CCE, Trivandrum Vs. Tandem Integrated Services 2010(20) STR 469 (Tri.–Bang.)**
- **Union of India Vs. Kasara District Parallel College Association 2014(9) TMI 385 – Kerala High Court**
- **Chanakya Mandal Pariwar Vs. Commissioner of CE, Pune-III, 2018(4) TMI 846**

7. Ld. DR while justifying the findings of the authorities below on this issue has mentioned that the appellants have failed to produce any documentary evidence to seek the benefit of the notification as relied upon by them and thus has prayed for the confirmation of this demand.

8. After hearing both the parties on this issue and pursing the record we observe that the demand has been confirmed for want of evidence establishing that the income for the impugned period was received for and on behalf of IGNOU and PTU. But we observe that due accreditation of

appellants from both these universities is very much on record. There is no dispute that IGNOU and PTU both are constituted under law. In view of this apparent fact the definition of Commercial Training & Coaching Services and the discussion, as above, is relevant.

9. The bare perusal makes it clear that any institute or establishment issuing any educational qualification which is recognized by law the same is exempted from the tax limits. The expression "recognized by law, no doubt, is a very wide expression as comparing to expression "Conferred by law" or "Conferred by Statue". To be covered under the term "recognized by law" the certificate/ degree/ diploma/ qualification is only required to be the product of a statue and the institute does not except it is sufficient that Institute has approval/ accreditation of some Institute constituted under statute. The Hon'ble Supreme Court in the case of **Narsingh Pratap Singh Deo Vs. State of Orissa AIR 1964 (SC) 1793** and in another case **R.S. Nayak Vs. A.R. Antulay 1984 (2) SCC 183** the Apex Court has held that law includes any ordinance, by law, rule, regulation, notification, custom or usage having force of law. Relying thereupon, we are of the opinion that since IGNOU and PTU are constituted in exercise of the legislative power the accreditation by them in favour of the appellant is very much covered under the terms "recognized by law". In view of this entire discussion even notification no 10 dated

26.06.2003 need not to looked into. We are therefore of the opinion that the demand confirmed by the authorities below under this head is also liable to be set aside.

Demand on hiring charges recovered from IGNOU:

It is submitted on behalf of appellant that the amount of Rs. 30,537/- under this head is received as reimbursement of expenses in the nature of computer maintenance and changing of new parts, supply of consumable items and stationery provided to the students on behalf of IGNOU thus the expenses are in relation to providing education for obtaining the degree of a recognizing university and as such these are also exempted. Findings below are therefore prayed to be set aside.

10. Ld. DR has justified the confirmation of the demand. To our opinion, as per the definition of CTCS under Section 65(26) of the Act (as mentioned above) what is taxable is training or coaching which is commercial in nature. Under the present head, the demand has been raised qua hiring of computer charges recovered from IGNOU. From no stretch of imagination the said hiring charges can be called as an amount recovered from IGNOU with respect to training/ coaching irrespective it is meant for imparting education and training to the students by a center ”recognized by law.” Thus the demand for the charges received as hiring of computer, stationery, etc. charges under commercial tanning and coaching service is not sustainable. Such kind

service may be classified as supply of tangible goods. But the impugned Show Cause Notice has not proposed the demand under the head of supply of tangible goods. The law is settled that the adjudicating authorities are not allowed to go beyond the scope of show cause notice. We therefore opine that the liability cannot be confirmed for the service to be that of tangible goods and the charges obtained for hiring of computers cannot be classified as the charges for imparting commercial training or coaching services. Therefore the demand under this head is not sustainable. The authorities below are opined to have committed an error while confirming the said demand as one for CTCs. Order is accordingly set aside to the extent as well.

Demand on Income from IIHT :

It is submitted on behalf of appellant qua this issue that IIHT is an institute engaged in providing training in latest information technology programs. The appellants were providing training and coaching to IIHT during the impugned period. Though appellants were collecting the fees inclusive of services from the students but it was purely on behalf of IIHT and in fact was to be remitted to IIHT itself and no service tax was even retained by the appellant under commercial training or coaching services. The CA has impressed upon the copies of cheques given to IIHT with respect to service tax payment. It is also

impressed upon that the IIHT has already discharged liability. The challans for the payment of tax by IIHT, as enclosed with the appeal, are impressed upon. It is further submitted that the demand of Rs. 10,51,472/- under this head will amount to double taxation of the transaction which will be against the spirit of taxation laws. In addition it is submitted that the course offered by the IIHT are vocational in nature and are exempted from taxability in view of notification no. 9/2003 dated 20.06.2003 and notification no. 24/2004 dated 10.09.2004. Finally relying upon the agreement of the appellant with IIHT the levy under this head is prayed to be set aside.

11. Ld. DR on the other hand has relied upon **Commissioner Vs. WLC College India Ltd., 2015(1) TMI 1366-Delhi High Court** & **Commissioner of Central Excise, Jaipur Vs. Adam Smith Institute of Management (ICFAI National College) & others, 2017(12) TMI 901-CESTAT New Delhi**. While justifying the order of commissioner (Appeals), he has prayed for confirmation of the demand and thus for dismissal of Appeal.

12. After hearing both the sides and perusing the agreement between the appellant and IITH we are of the opinion that though the parities to the agreements are referred to as franchiser and franchisee but the terms and

conditions specifically under para 1.7.1 of the said agreement makes it is clear that the appellant was permitted to use any other new trademark, trademill or service mark in relation to its business of education and training in information technology however on being advised by the franchiser in writing. This particular observation makes it clear that except the nomenclature, the agreement is actually for franchisee services. Further perusal of the agreement, specifically para 2.1.1 thereof, makes it clear that royalty of 15% of total gross collections of every month received by the appellant was agreed to be the share of IIHT and the remaining 85% thereof was agreed to be that of the appellant. From the above said clause of the agreement between appellant and IIHT and in view of the admitted fact that the appellant is the service tax provider whereas IIHT is the recipient thereof Section 68 of the Finance Act, 1944 acquires relevance according to which the liability to pay service tax in such manner and within such period as may be prescribed, rests upon such person who is providing taxable services to any other person. Thus the statue itself prohibits any agreement of services provider and service recipient to agree for the liability to be discharged by the services recipient, unless and until it is so provided by any other provision of law. The same is not true for the present demand. It is not the case of the appellant that it fall under the category where

service tax is to be charged by reverse mechanism. Hence the above said agreements has no sustainability in the eyes of law. Any payment if at all is made by IIHT is not acceptable in law as a valid payment. It is appellant only being the service provider who has to discharge the liability. The plea of double taxation, as raised by the appellant, therefore has no significance. Resultantly, we find no infirmity in the findings of the authorities below qua confirming the impugned demand. The order to that extent is hereby upheld.

Demand on Bitcom Tuition fees:

It is submitted on behalf of the appellant that an amount of Rs. 63,786/- as received under this head is received against the short term vocational courses provided by the appellant. The said service is exempted under notification no. 9 on 01.03.2003. Alternatively, it is argued that even if the service is considered as taxable still and exemption is available to the appellant being a benefit of SSP exemption under Notification No. 6 dated 01.03.2005. The demand is therefore prayed to be set aside. Per contra, Ld. DR has justified that demand qua this particular income.

13. After hearing both the parties, we are of the opinion that issue is no more *res-integra.* The Hon'ble High Court Delhi in the case of **Commissioner YSWLC College India Ltd. 2015(1)TMI-1366-Del. H.C**. which is also been relied by this Tribunal in the case of **Commissioner of**

Central Excise, Jaipur Vs. Adam Smith Institute of Management (ICFAI National College) & others, 2017(12) TMI 901-CESTAT New Delhi has approved:

> *"The specific term of what is meant by 'vocational training' would include computer training institute or recreation training institute or a coaching centre," 10…….. So long as the broad nature of the activity is to impact skill to enable the beneficiaries to seek employment or undertake self employment directly."*

14. We also observe that as per notification no.24/2004 vocational training institute means a Commercial Training or Coaching Centre which provides vocational training or coaching that impart skill to enable the trainee to seek employment or undertakes an employment directly after such training or coaching. Since the nature of training in the present case is about latest information technology programs such as networking, cloud computing net java etc., we are of the opinion that the training is a job specific talent devolvement. As a result, the appellant is opined to be a vocational training institute entitled for the exemption of above notification dated 10.09.2004. The demand of Rs. 63,786/- as confirmed by the adjudicating authorities below is therefore hereby set aside.

Demand as raised for miscellaneous income:

Now coming to demand of Rs. 6,542/- service tax against the miscellaneous income and of Rs. 28,748/- service tax

against the income not forming the part of P & L account, it is submitted by the appellant that miscellaneous income is out of the sale of the scrap library charges etc. However, we observe that there is no evidence on record to this effect the original adjudicating authority has clearly recorded that despite a ledger account was asked from the appellant they have failed to provide same. In absence thereof the miscellaneous income is held to have been received in relation to providing the services of commercial training and coaching. In the absence of evidence to prove the assertion of the appellant we find no infirmity in the order under challenge same is hereby upheld. Similarly, the plea of the appellant for calculation mistake while computing the income not forming the part of P & L Account is not sustainable for want of evidence to that effect the order confirming the said demand is therefore held justified. The order under challenge is upheld to this effect.

15. **Finally coming to the plea of limitation as been taken by the appellant:**

No doubt the period of demand herein is April 2004 to September 2009 and Show Cause Notice is dated 22.04.2010. However as already observed by the Adjudicating Authorities below, the appellant has not cooperated properly during the investigation and he failed to provide the requisite documents. Further it is observed that the appellants are providing coaching and training at

mega level even for the institutes of repute, any ignorance to the legal provisions about applicable taxability cannot be presumed on their part. Otherwise also ignorance of law is no excuse. When any service provider fails to comply with the provisions of the Finance Act, which make him liable to pay the service tax, the only conclusion drawn is that the same act is with an intent to evade duty. Otherwise also in the era of self assessment not declaring the income received against rendering the services amounts to the omission to self declare and thus the violation of provisions of law. The element of intent to evade duty in this circumstance cannot be ruled out and the same also amounts to suppression of facts. Seeing from this angle we hold that the Department was entitled to invoke the proviso of Section 73 of the Act. Hence, the Show Cause Notice is not barred by time. For the same reason the penalty imposed is held justified however to the extent of the demands that have been confirmed as taxable.

16. As a result of entire above discussion we hereby partly allow the appeal. The demand qua income from insurance company, IGNOU PTU and Tuition fee for short term vocational courses is hereby dropped. However, the demand qua the hiring charges recovered from IGNOU, income from IIHT, Miscellaneous income and demand of income not forming the part of P&L account are hereby confirmed. Consequential benefits, if any, to follow.

(Pronounced in the open court on 05.11.2018)

(**C. L. MAHAR**)
MEMBER(TECHNICAL)

(RACHNA GUPTA)
MEMBER (JUDICIAL)

Sakshi