

**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
EASTERN ZONAL BENCH : KOLKATA**

REGIONAL BENCH – COURT NO. 1

Service Tax Appeal No. 492 of 2011

(Arising out of Order-in-Original No. 11/COMM/ST/KOL/11-12 dated 08.07.2011 passed by the Commissioner of Service Tax, Kolkata Service Tax Commissionerate, Kendriya Utpad Shulk Bhawan, 3rd Floor, 180, Santipally, Rajdanga Main Road, Kolkata – 700 107)

M/s. Globsyn Technologies Limited
Globsyn Crystals, XI-11 & 12, Block-EP, Sector-V,
Salt Lake Electronics Complex, Kolkata – 700 091

: Appellant

VERSUS

Commissioner of Service Tax
Central Excise Bhavan, 180, Santipally, Rajdanga Main Road,
Kolkata – 700 107

: Respondent

APPEARANCE:

Shri A.K. Agarwal, Chartered Accountant for the Appellant
Assisted by Smt. Pinki Agarwal, Chartered Accountant

Shri J. Chattopadhyay, Authorized Representative for the Respondent

CORAM:

HON'BLE SHRI ASHOK JINDAL, MEMBER (JUDICIAL)
HON'BLE SHRI K. ANPAZHAKAN, MEMBER (TECHNICAL)

FINAL ORDER NO. 75609 / 2024

DATE OF HEARING: 08.03.2024

DATE OF DECISION: 22.03.2024

Order : [Per Shri K. Anpazhakan]

The present appeal has been filed against the
impugned Order-in-Original No.
11/COMM/ST/KOL/11-12 dated 08.07.2011 passed by
the Commissioner of Service Tax, Kolkata.

2. The facts of the case are that the appellants are a
commercial training and coaching center providing
vocational training to the students. They are also

offering some courses in collaboration with some Universities. The courses recognized by law and do not come under the purview of commercial or industrial coaching service. As the Universities issue degree/ diploma for the courses offered, the appellant considered that they are not liable to pay service tax for the fees charged for these courses. As per Notification No. 24/2004-ST 10.09.2004, vocational training provided by a Coaching Center is exempted from payment of service tax. Accordingly, the appellant has not paid service tax for the charges received for these vocational courses. The department considered the services rendered by the appellant are taxable services and the exemption provided under notification 24/2004-ST dated 10.09.2004 is not applicable to them. Accordingly, a Show Cause Notice was issued demanding service tax from the appellant under the category of 'Commercial and industrial coaching service. The Notice was adjudicated and the demand of service tax along with interest and penalty raised in the Notice are confirmed. Aggrieved against the confirmation of the demands in the impugned order, the appellant has filed this appeal.

3. The appellant submits that "vocational training institute" means a commercial training or coaching centre which provides vocational training or coaching that impart skills to enable the trainee to seek employment or undertake self-employment, directly after such training or coaching. They are rendering vocational training to the students, which can be ascertained from the Brochures.

3.1. Some of the courses offered them are recognized by law. These courses are conducted by them jointly with some Indian or International universities. Some

such courses are offered by them jointly with the following universities.

- PGDSEBM is jointly with Jadavpur University.
- PGDAEIM is jointly with Calcutta University,
- PGDM-IF is jointly with Tulane University, USA,
- MBA/MBM and PGDBM are jointly with Coventry University.
- M.Sc. with Glasgow University.

3.2 For these courses, the degree, diploma or certificates are awarded by the respective Universities. Accordingly, they submit that these courses are recognized by law and they do not come under the purview of commercial or industrial coaching service. They submit that the Ld. Adjudicating authority failed to appreciate that the courses provided by them are in collaboration with the universities and the certificate/degree/diploma were issued by the respective universities to the students, which are recognized by the law. Further the legal status of respective universities is not in dispute. It can be established through the MOU with the universities that syllabus is prescribed by the university in consultation with the appellant institute and examinations are also conducted by the universities which thereafter issues certificate/degree/diploma to successful candidates. Therefore, the appellant submits that the institute provided educational qualification recognized by the law and are accordingly outside the ambit of 'commercial training or coaching services. Hence, there is no service tax liability on these services.

3.3. In support of their contention, the appellant relied on the following decisions, wherein it has been held that university affiliated courses are outside the purview of service tax.

- i. 2006-Kerela HC - Malappuram Distt. Parallel College Assn.
- ii. *Indian School of Business v. CCT, Rangareddy-GST [2019 (2) TMI 93 - CESTAT, Hyderabad]*

3.4. In view of the above submissions, the appellant prayed for setting aside the demands confirmed in the impugned order and allow their appeal.

4. The Ld. Authorized Representative appearing for the Revenue reiterated the findings of the adjudicating authority in the impugned order.

5. Heard both sides and perused the appeal documents.

6. We observe that Notification No. 24/2004-ST 10.09.2004, exempts vocational training provided by a Coaching Centre. The appellant considered the services rendered by them are exempted from payment of service tax as per this Notification. We observe that there is no specific finding in the impugned order to the effect that the coaching offered by the appellant are not vocational training. A perusal of the Brochures submitted by the appellant clearly reveal that most of the courses offered by the appellant are vocational training. Accordingly, we hold that the appellant are eligible for the benefit of Notification No. 24/2004-ST 10.09.2004.

6.1. The appellant submitted that the remaining courses offered by them are in collaboration with the universities and the certificate/degree/diploma for these courses are issued by the respective universities to the students, which are recognized by the law. We observe that the legal status of respective universities is not in dispute. The syllabus for these courses are prescribed by the universities in consultation with the appellant institute and examinations are also conducted by the universities which thereafter issues certificate/degree/diploma to successful candidates. Therefore, we hold that the appellant institute provided educational qualification recognized by the law and are accordingly outside the ambit of 'commercial training or coaching services. Hence, there is no service tax liability on these services.

6.2. We find that this view has been taken by the Tribunal, Hyderabad in the case of *Indian School of Business v. CCT, Rangareddy-GST [2019 (2) TMI 93 – CESTAT, Hyderabad]*, the relevant paragraph of the said decision of the reproduced below: -

"13. We have considered the arguments on both sides and perused the records. The first issue to be decided is whether the appellant can be considered as 'commercial training and coaching institute' within the meaning of Sec.65(105) (zzc) as retrospectively amended effective from 01.07.2003. This matter had gone up to the Hon'ble Supreme Court and on remand CESTAT-Bangalore vide Final Order No.514- 520/2012 dated 31.07.2012 held that three co-appellants in the case viz., ISB (appellant herein), the Institute of Chartered Financial Analysts of India and Badruka Institute of Foreign Trade were commercial training and coaching institutes. The matter was remanded back to the Commissioners only with respect to examining the availability of the benefit of notifications 9/2003-ST & 24/2004-ST. This order of

CESTAT- Bangalore has been challenged by the appellant herein in Civil Appeal No.8787/2012 and is pending before the Hon'ble Supreme Court. In view of the factual situation, we do not find it necessary for us to pass any order on this aspect or deviate from the view already taken by the CESTAT an appeal against which is before the Hon'ble Apex Court. As far as the second issue of the benefit of exemption notifications is considered, both these exemption notifications are available for 'vocational training institutes' which have been defined as in 'commercial training or coaching centre' which provide vocational coaching or training that imparts skills to enable the trainee to seek employment or undertaken self employment directly after such training or coaching. We cannot think of a more practical job or self employment oriented training or coaching than management courses conducted by the appellant. In respect of another appellant in Final Order No.514-520/2012, we have already held that ICFAI is entitled to the benefit of these exemption notifications. In view of the above, we find that the appellant is entitled to the benefit of exemption notifications 9/2003-ST and 24/2004-ST. Consequently, the demand for the period July, 2003 to September, 2010 needs to be set aside and we do so. As far as the period October, 2010 to September, 2011 is concerned, the demand needs to be upheld as it is not covered by any exemption notification. The appropriate rate of interest has also to be paid. The question of penalty does not apply in this case as it is a demand for normal period under Section 78. It has already been held in Final Order No.514-520/2012 dated 31.07.2012 that no penalties were to be imposed under Sec.76 & 77 of the Act. In view of the above, the appeal is disposed of as follows:

a) The demand for service tax for the period July, 2003 to September, 2010 is set aside as the appellant were covered by the Notification Nos.9/2003-ST & 24/2004-ST.

b) The demand for the period October, 2010 to September, 2011 is upheld under the 'commercial training or coaching services

c) All penalties are set aside."

6.3. Following the ratio of the decision cited above, we hold that the demand of service tax confirmed in the impugned order is not sustainable. Since, the demand itself is not sustainable, the question of demanding interest and imposing penalty does not arise.

7. In view of the above discussion, we set aside the impugned order and allow the appeal filed by the appellant.

(Order pronounced in the open court on **22.03.2024**)

Sd/-
(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

Sd/-
(ASHOK JINDAL)
MEMBER (JUDICIAL)

Sdd