

**Customs, Excise & Service Tax Appellate Tribunal
West Zonal Bench At Ahmedabad**

REGIONAL BENCH- COURT NO.3

Service Tax Appeal No. 220 of 2012

(Arising out of OIA-COMMR-A-69-70-VDR-I-2012 dated 08.02.2012 passed by
Commissioner of Central Excise,-VADODARA-I)

ICFAI BRANCH

10, LAXMI SOCIETY, B/H, BARODA HEART RESEARCH INSTITUTE,
HARIBHAKTI COLONY, RACE COURSE CIRCLE,
VADODARA,-GUJARAT

.....Appellant

VERSUS

C.C.E. & S.T.-Vadodara-II

1ST FLOOR... NEW CENTRAL EXCISE BUILDING,
RACE COURSE CIRCLE, VADODARA, GUJARAT-390007

.....Respondent

AND

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.....Respondent

APPEARANCE:

Shri Jigar Shah and Amber Kumrawat (Advocate) appeared for the Appellant
Shri G. Kirupanandan, Superintendent (AR) for the Respondent

**CORAM: HON'BLE MEMBER (JUDICIAL), MR. RAMESH NAIR
HON'BLE MEMBER (TECHNICAL), MR. RAJU**

Final Order No. A/ 10094-10095 /2023

DATE OF HEARING: 21.12.2022

DATE OF DECISION: 23.01.2023

RAMESH NAIR

M/s ICFAI, Branch Vadodara (hereinafter referred to as "the Appellant") during relevant period was a constituent of Institute of Chartered Financial Analysis of India, Hyderabad (for brevity, ICFAI Hyderabad') which was inter-alia engaged in imparting educational programmes in the areas of finance, banking, insurance, accounting, law, management, information technology, arts, commerce, education, science and technology, at bachelor's and master's level on full time campus and distance learning modes. Upon successful completion of the aforesaid courses degree certificates were awarded by ICFAI University Dehradun

established under the respective State Act and recognised by UGC under Section 2(1) of UGC Act, 1956. The aforesaid educational programmes help the students to get employed with various organisations.

1.1 With effect from 01.10.2007, all the of Appellant transferred to the ICFAI Academy. Thus, the present appeals have been filed by ICFAI Academy against the Order-in-Appeal No(s). Commr(A)/69&70/VDR-1/2012 dated 08.02.2012 issued by Commissioner (Appeals), Vadodara-1.

1.2 The Appellant used to accept the application from interested candidates for various courses and forward the same to their centralised office at Hyderabad for all accounting purposes.

1.3 An investigation was conducted upon ICFAI and its associates all over India, which resulted into issuance of multiple show cause notices proposing the demand of service tax along with applicable cess, interest and penalty, for the period of October 2007 to September 2009.

1.4 On the similar lines Appellant branch at Vadodara, Gujarat also received show cause notice(s) dated 06.02.2009, 24.07.2009 and 03.11.2009, inter alia, alleging that:-

a) Appellant had provided taxable services under the category of Commercial Training or Coaching" and collected fees during the relevant period.

b) Appellant is neither recognized by the UGC nor have any prior permission/approval of regularly statutory bodies like AICTE, NCTE, Bar Council of India and Distance Education Council for running professional/technical/distance education courses as required under the UGC (Establishment of and Maintenance of Standards in Private Universities) Regulation, 2003 Therefore, the Appellant appears to be providing services taxable under the category of Commercial Training or Coaching Service.'

c) The Appellant had neither obtained registration nor filed ST-3 returns.

d) The Appellant did not pay service tax and had suppressed the material facts regarding the taxable services provided, collection of taxable amounts from the students and thereby contravened the provisions of Sections 68, 69 and 70 of the Finance Act, 1994 read with Rules 4, 5, 6, 7 & 7C of the Service Tax Rules, 1994.

1.5 On the above grounds, it was expressed that the Appellant has provided taxable services under the category of Commercial Training or

Coaching Service and had collected fee to Rs. 41,61,000/- and Rs. 56,68,219/- as consideration towards the aforesaid service from the interested candidate. Consequently, the demand of service tax amounting to Rs. 12,14,982/- (for the period between October 2007 to September 2008) and Rs. 10,81,809/- (for the between October to September 2009) along with applicable interest and penalty was proposed to be recovered from the Appellant.

1.6 The adjudicating authority namely, learned Additional Commissioner adjudicated the above Show Cause Notice issued to the appellant vide common order in original no 9/DEM/STJC/D-III/10-11 dated 30.11.2010 and upheld the demand of service tax as proposed therein along with applicable interest and penalty. Aggrieved by the aforesaid order, the appellant filed an appeal to the learned Commissioner (Appeals) Vadodara. The Learned Commissioner (Appeals) decided the appeals vide order in appeal No. COMMR (A)/69 & 70/VDR-I/2012 dated 08.02.2012 whereby he confirmed the demand of service tax confirmed by the adjudicating authority along with applicable interest and penalties. Being aggrieved by the findings of the learned Commissioner (Appeals) in the impugned order, the appellant has preferred the present appeals before this Tribunal.

2. Shri Jigar Shah along with Shri Amber Kumrawat, learned Counsel appearing on behalf of the appellant submits that this issue is no longer res-integra in view of the decision of Hon'ble CESTAT Ahmadabad in the case of ICFAI Branch-Vadodara vs CCE & ST reported at 2018 (8) TMI-556-(Tri.-Amd.). Therefore, following the said decision of the appellant itself, the impugned orders are not sustainable. Hence, the same are liable to be set aside and appeals deserve to be allowed. He also placed reliance on the following judgements:

- ICFAI vs CST Bangalore 2017 (1) TMI 349 (Tri. Hyd.)
- CCE Jaipur vs ICFAI 2017 (12) TMI 901 (Tri. Del.)
- CCE Hyderabad vs ICFAI 2018 (8) TMI 826 (SC)
- Frankfinn Aviation Service Pvt. Ltd. 2017 (3) TMI 1027 (Tri. Del)
- Indian School of Business 2019 (2) TMI 93 (Tri. Hyd.)
- Ashu Export Pormotors (P) Ltd. 2011 (11) TMI 387 (Tri. Del.)
- Actor Prepares 2013 (12) TMI 1070 (Tri Mum)
- ITM International 2017 (11) TMI 1230 (CESTAT-LB)
- Indian Institute of Aircraft Engineering 2013 (30) STR 689 (Delhi HC)

- Rosalinds Mediretta Institutional Foundation 2018 (1) TMI 2020 (Tri Del.)
- I.C Financial Analysis of India 2016 (43) STR 287 (Tri. Del.)

3. Shri G. Kirupanandan, learned (Superintendent) Authorized Representative appearing for the Revenue reiterates the findings of the impugned order.

4. We have carefully considered the submissions made by both the sides and perused the records. We find that the issue in hand has already been considered by this Tribunal at various benches namely, Hyderabad, Delhi and Ahmadabad in judgements cited above. Moreover, in one of the case, Revenue had approached Hon'ble Supreme Court by filing Civil Appeal which was dismissed as reported in Commissioner of Service Tax Hyderabad-II vs M/s Industry of Trader Financial Analysis of India 2018 (8) TMI A-26(SC). We produce the order of this Tribunal of Ahmadabad Bench in the appellant's own branch of Vadodara, reported in 2018 (8) TMI 556 – CESTAT as under:-

"4. We have carefully considered the submission made by both sides and perused the records, we find that though the Ld. Counsel has made alternate submissions, we are of the view that the matter can be decided considering the submission regarding Commercial or Coaching Service provided by the appellant is vocational training. In this regard, the very same issue has already been decided in the appellant's own case by this Tribunal in the CESTAT, Hyderabad. The order of the CESTAT Hyderabad is reproduced as under:-

"5. On a careful consideration of the submissions made by both sides and on perusal of records, we find that the adjudicating authority has in the denovo adjudication in paragraph No 8 has correctly brought out the limited demands by the Tribunal in the second final order and has proceeded to decide the issue.

6. The adjudicating authority in the order-in-original has held against the appellant for denying the benefit of Notification No. 9/2003-ST and 24/2004 only on the ground that appellant is not a vocational training institute. According to the term vocational training institute does not include various educational programmes conducted by the appellant in the field of management, finance, banking, insurance, accounts law etc. and the exemption notification has to be construed strictly for claiming the benefit of exemption; that definition of the word (skill) as per business dictionary etc will not cover various educational programmes conducted by the appellant.

7. As regards the submissions made by the learned counsel that the second order of the Tribunal needs to be set aside on the ground that on the same set of facts, the second order has held that the appellant is not a university. In our considered view we find that the second order of the appellant though appealed against by the appellant before the Apex Court, there is no stay of the said order. Hence, in our view, raising the question before the Tribunal again on the same issue and praying that the second order of the Tribunal be set aside seems to be a prayer made before the wrong Forum. In view of this we reject the submissions made by the learned counsel on this point.

8. We take up the second point raised by the appellant as to availability of benefit of Notification No. 9/2003-ST dated 20th June 2003 and Notification No. 24/2004-ST in order to appreciate the correct position as to the eligibility to avail exemption Notification. The said Notifications are reproduced:

[Notification No. 9/2003-S.T., dated 20-6-2003]

"In exercise of the powers conferred by 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;*
- (b) a computer training institute; or*
- (c) a recreational training institute; to any person, from the whole of the service tax leviable thereon under sub-section (2) of section 66 of the said Act.*

Explanation.- For the purposes of this notification, -

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

This notification shall come into force on the 1st day of 2. July, 2003 and shall remain in force upto and inclusive of the 29th day of February, 2004."

[Notification No. 24/2004-S.T., dated 10-9-2004]

"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" 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 selfemployment, 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."*

9. It can be seen from the above reproduced notifications that the explanation as to what is vocational training institute indicates that the said exemption can be extended to any vocational training institute which imparts skills to enable the trainee to seek employment or undertake self-employment directly after such training or coaching. It is nobodys case in all these appeals that for completion of the educational programmes conducted by the appellants, students are employed either directly by the employers or can seek self-employment. We find that in support of such a claim, appellants have enclosed a list of the students who were employed by various industries on successful completion of education programmes conducted by the appellants. In our view, there can not be any doubt as to the fact that the students successfully

completing the educational programmes of the appellants are being selected for employment by various organisations. On this factual matrix, we find that the decision of the Tribunal in the case of Ashu Export Promoters Pvt Ltd., (supra) which has been affirmed by the Honble High Court of Delhi is covering the issue in favour of the appellant. We reproduce the said ratio:

"11. It is evident that the term "vocational training institute" included the commercial training or coaching centers which provide vocational coaching or training meant to "impart skills to enable the trainees to seek employment or to have self employment directly after such training or coaching. The notion of such training institute having been recognized or accredited to nowhere emerges from such a broad definition. The further Notification of 2010 substitutes the existing explanation to the term "vocational training institute" and narrowing it to those institutes affiliated to National Council for Vocational Training offering courses in designated trade in fact supports the assessee. Had the intention been to exempt only such class or category of institutions, the appropriate authority would have designed such a condition in the original Notification of 2003 and Notification No.10 of 2004 which had been relied upon in this case."

We also find that the coordinate bench of the Tribunal presided over by the Honble President in the case of Actor prepares Vs CST Mumbai [2014(33) STR 546 (Tri-Mum)] has also come to the same conclusion and we reproduce the relevant paragraphs.

"5. Admittedly, the assessee is neither an Industrial Training Institute or an Industrial Training Centre affiliated to the National Council for Vocational Training nor is offering courses in designated trades as notified under the Apprentices Act, 1961. The issue therefore is whether the petitioner which is admittedly vocational training institute and satisfies the criteria for exemption under Notification No. 24/2004- S.T., is yet disentitled to the benefit of the exemption. The adjudicating authority assumed that the assessee is not entitled to exemption from the liability to Service Tax, as the assessee did not satisfy the requirement of a vocational training institute as defined in exemption Notification No. 3/2010-S.T.

6. In our considered view, this assumption by Revenue and by the adjudicating authority is fallacious and misconceived. The power to grant exemption, in the nature of an executive exercise of power is under Section 93 of the Act. The provision authorises no grant retrospective exemption or to alter the scope of an extant exemption retrospectively. In this view of the matter, exemption Notification No. 3/2010-S.T., dated 27-2-2010 can only have prospective effect and cannot alter the definition of the expression vocational training institute retrospectively. Vocational Training Institute as defined by Notification No. 24/2004-S.T., dated 10-9-2004 contains no such restrictive definition which requires affiliation to National Council for Vocational Training or the requirement of offering courses in designated trades as notified under the Apprentices Act, 1961, by an Industrial Training Institute or an Industrial Training Centre. It is impermissible for an authority conferred with the power to enforce provisions of the Act, to interpret the Act or exemption Notifications issued thereunder, by resorting to assumptions impermissible in law. For the aforesaid reason, the adjudication order is fallacious and unsustainable. It is accordingly quashed. The appeal is allowed."

Similar views have been expressed by the coordinate bench of the Tribunal in the case of WLC College India Ltd [2012(27)STR 377(Tri-Del)] which has been upheld by the Honble High Court of Delhi as reported at 2015(38)STR J 207.

10. In view of the foregoing, in the facts and circumstances of this case, service tax demands raised and confirmed in the denovo adjudication by

denying the benefit of exemption notification for the period 1.07.2003 to 31.3.2005 is incorrect and unsustainable.

11. Accordingly, the impugned orders are set aside and the appeals are allowed."

4. From the above order it can be seen that the very same issue involved in the present case has already been decided in favour of the appellant. Therefore, following the ratio of the above judgement, we set aside the impugned order and allow the appeal."

5. In view of above decision of the Tribunal which is based on various other decisions of different CESTAT Bench, coupled with dismissal of Revenue's appeal by the Apex Court, the issue is no longer res-integra. Accordingly, we, following the above cited decision in the appellant's own case, set aside the impugned orders and allow the appeals with consequential relief.

(Pronounced in the open court on 23.01.2023)

(RAMESH NAIR)
MEMBER (JUDICIAL)

(RAJU)
MEMBER (TECHNICAL)

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