

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Zonal Bench At Ahmedabad**

REGIONAL BENCH- COURT NO.3

SERVICE TAX APPEAL NO. 10132 OF 2016

(Arising out of OIO-AHM-SVTAX-000-COM-007-15-16 dated 20/11/2015 passed by Commissioner of Central Excise and Service Tax-SERVICE TAX - AHMEDABAD)

INDIAN INSTITUTE OF MANAGEMENT

IIM ROAD, VASTRAPUR- AHMEDABAD, GUJARAT

.....Appellant

VERSUS

C.S.T.-SERVICE TAX - AHMEDABAD

7 th Floor, Central Excise Bhawan, Nr. Polytechnic
CENTRAL EXCISE BHAVAN, AMBAWADI,
AHMEDABAD, GUJARAT-380015

.....Respondent

AND

SERVICE TAX APPEAL NO. 10832 OF 2018

(Arising out of OIO-AHM-EXCUS-001-APP-259-2017-18 dated 25.01.2018 passed by Commissioner of Central Excise and Service Tax-SERVICE TAX - AHMEDABAD)

INDIAN INSTITUTE OF MANAGEMENT

IIM ROAD, VASTRAPUR- AHMEDABAD, GUJARAT

.....Appellant

VERSUS

C.S.T.-SERVICE TAX - AHMEDABAD

7 th Floor, Central Excise Bhawan, Nr. Polytechnic
CENTRAL EXCISE BHAVAN, AMBAWADI,
AHMEDABAD, GUJARAT-380015

.....Respondent

APPEARANCE:

Shri. Paritosh Gupta, Advocate for the Appellant

Shri. Vinod Lukose (Authorized Representative) for the Respondent

CORAM:

HON'BLE MEMBER (JUDICIAL), MR. RAMESH NAIR

HON'BLE MEMBER (TECHNICAL), MR. RAJU

Final Order No. A/ 11127-11128 /2022

DATE OF HEARING: 20.06.2022

DATE OF DECISION: 14.09.2022

RAJU

This appeal has been filed by Indian Institute of Management (IIM) against demand of service tax under the head of "Mailing list compilation and Mailing services".

1.1 The appellants are a premier education institute. The appellant conducted common admission test (CAT) for admission of applicants to the Indian Institute of Management. A number of non-IIM institutes use CAT scores to evaluate the applicants applying for admission to such non-IIM

institutes. The scores of the CAT exam are made available to non-IIM Institutes on payment of prescribed fee as per Memorandum of Understanding between appellant and such Non-IIM Institutes, for use of the said scores. The Non-IIM Institutions pay an amount of Rs. 2,00,000/- and a processing fee of Rs. 200/- per candidate for availing access to the CAT scores. The institutes which have not used CAT 2009 official score pay one time membership fee of Rs. 50,000/-, an annual fee of Rs. 2,00,000/- and a processing fee of Rs. 200/- per candidate for availing access to CAT-2009 course. The IIM Ahmedabad which conducted the said CAT, Admission Test in the year 2009 received an amount of Rs. 5,52,37,000/- during 2008-09 and 2009-10 as fee towards providing access to CAT's scores. The Central Excise Revenue Audit (CERA) in their Statement of Fact (SoF) dated 15.10.2010 observed that the said service provided by IIM amounting to provision of "Mailing list compilation and Mailing service". A show cause notice was issued to the appellant seeking to demand service tax on the aforesaid activity undertaken by the appellant.

1.2 As per Memorandum of Understanding between appellant and service recipients, Point No. 16, the appellant provided the section-wise scores and percentiles of individual candidates to Non-IIM Institutes by mail in the Financial Year 2009-2010. The said scores were used for various purpose by the Non-IIM Institutes. The primary purpose for obtaining these course was to ascertain the calibre of students for the purpose of admission to the said Non-IIM Institutes.

1.3 For receiving such services, the Non-IIM business schools entered into a Memorandum of Understanding cum agreement with IIMs for utilizing the result of CAT for the admission process on payment of consideration. The said Agreement envisages the following mechanism: -

- a) The Business School should send in a list with the Name and unique CAT Registration Number of the candidates who have applied to them before a certain cut-off date

b) In response thereto, the concerned IIM will provide access with section wise and total scores and percentiles (Logic and Data Interpretation, Quantitative, Verbal and Total Score) of such individual candidates.

2. Learned Counsel for appellants pointed out that Section 65 (105) (zzzg) of the Finance Act defines the mailing list compilation and mailing service as follows:

"Taxable Service" means any service provided or to be provided to any person, by any other person, in relation to mailing list compilation and mailing;

Section 65(63a) of the Finance Act defines mailing list compilation and mailing service as follows:

"Mailing List Compilation and Mailing" means any service in relation to-

(i) **compiling and providing list of name, address and any other information from any source;** or

(ii) sending document, information, goods or any other material in a packet, by whatever name called, by addressing, stuffing, sealing, metering or mailing,

(iii) for or on behalf of, the client;

2.2 Learned counsel for the appellant also relied on the CBEC Circular F. No. B1/6/2005-TRU dated 27.07.2005. He argued that the service provided by the appellant is by no means the service of mailing list compilation and mailing service.

3. Learned Authorized Representative relies on the impugned order.

4. We have gone through the rival submissions. We find that the appellants are a premier institution and are engaged in providing education in the field of management and business. For the purpose of admission into the IIMs, IIM Ahmedabad conducted the CAT (common admission test) of candidates in the year 2009. A large number of candidates took the exam and some candidates were selected by IIMs for the purpose of

admission to IIM. A larger number of candidates who took the CAT exam also applied to various other institutes and those institutes sought to use the CAT's scores for the purpose of admission into their schools. To access the CAT scores for themselves, the said Non-IIM Institutes entered into a Memorandum of Understanding with IIM Ahmedabad, the appellant. The Memorandum of Understanding clearly prescribed the eligibility of people who could take the CAT exam. The Memorandum of Understanding inter alia contained following clauses:-

7. The non-IM institutes must incorporate the following statement in the Advertisement.

Our Institute uses CAT for short-listing the candidates for our Post-graduate Programme(s) in Management. IIMs have no role either in the selection process or in the conduct of the programme.

8. The non-IIM institutes should fix the last date for receiving their programme applications from their candidates around the middle of November 2009 so that they get adequate time to process the applications and send the list of candidates to IIMA within the deadline stipulated in para 10.
10. Institutions that have used the CAT 2008 official scores pay an Annual fee of **Rs. 2,00,000/-** (Rupees two lakhs only) and a Processing Fee of **Rs. 200/-** (Rupees Two hundred only) per candidate for availing of CAT scores. The fee should be sent by a demand draft drawn in favour of '**IIM Ahmedabad**' and payable at **Ahmedabad**. The Annual Fee of Rs. 2,00,000/- (Rupees. Two lakhs only) should be sent along with MoU (duly completed) so as to reach IIM Ahmedabad latest by **June 30, 2009**. The Processing Fee of Rs. 200/- per candidate (along with list of candidates) should reach IIM Ahmedabad on or before **December 15, 2009**.
11. Institutions that have not used CAT-2008 official scores pay a one time Membership Fee of **Rs. 50,000/-** (Rupees fifty thousand only), an Annual Fee of **Rs. 2,00,000/-** (Rupees two lakhs only) and a Processing Fee of **Rs. 200/-** (Rupees Two hundred only) per candidate for availing of CAT 2009 scores. The fee should be sent by a demand draft drawn in favour of '**IIM Ahmedabad** and payable at **Ahmedabad**. The membership fee and the annual fee should be sent along with the MoU (duly completed) so as to reach IIM Ahmedabad latest by **July 15, 2009**. The processing fee of **Rs. 200/-** per candidate (along with list of candidates) should reach IIM Ahmedabad on or before **December 15, 2009**.

13. The Institute should send the list of candidates who have applied to that Institute along with their CTA Test Registration Number in a CD for processing the results so as to reach IIMA latest by **December 15, 2009. Please ensure that the list contains the name and the CAT registration number of all candidates who have applied to your Institute.** Supplementary lists will not be entertained. Any error/duplication/omission etc. of the Test Registration Numbers should be resolved before the list is mailed to IIMA. Under no circumstances, request for reprocessing of results will be entertained. **Please also note that no list will be accepted after December 15, 2009.**
16. The Institutions receiving CAT facility will be provided with section-wise and total scores and percentiles (Logic and Data Interpretation, Quantitative, Verbal, and Total Score) of individual candidates. The percentile scores are calculated on the basis of entire population.
20. Non-IIM Institute's should submit the list of candidates selected to their programmes by first week of June, 2010.

From the above Memorandum of Understanding, it is seen that the activity of the appellant is nowhere related to mailing list compilation and mailing service. The said service has been defined in following manner:

"Mailing List Compilation and Mailing" means any service in relation to-

- (i) **compiling and providing list of name, address and any other information from any source;** or
- (ii) sending document, information, goods or any other material in a packet, by whatever name called, by addressing, stuffing, sealing, metering or mailing,
- (iii) for or on behalf of, the client;

It is seen that the appellants are not compiling any list or providing list of names addresses etc. The appellants are merely providing scores in respect of names of candidates supplied by the clients (Non-IIM Institutes). Moreover, the activity of 'Mailing list compilation and mailing' is done for or on behalf of the client. In this case the appellants are only dealing with the clients and not with any third party. Moreover, the activity envisage to be taxed

under the head of 'Mailing list compilation and Mailing services' is totally different from the activity being undertaken by the appellant as is apparent from the Circular dated 27.07.2005 reproduced below:

“12. Mailing list compilation and mailing

12.1 Any service provided or to be provided to any person, by any other person, in relation to mailing list compilation and mailing is taxable under sub-clause (zzzg) of section 65(105) of the Finance Act, 1994.

"Mailing list compilation and mailing" has been defined under clause (63a) of section 65 of the Finance Act, 1994.

12.2 Business establishments such as banks, insurance companies, companies listed on stock exchanges, real estate agents and other similar commercial entities engage the services of persons who compile and provide lists of names, addresses and other information from telephone directories, internet or any other source of information for the benefit of the business. Some agencies also provide services of sending documents, materials, information or any other goods by addressing stuffing, sealing, metering or mailing the envelope or packet for or on behalf of the client. Such services are taxable under this category of service. Mail order business companies may engage the services of mailing companies to despatch goods to customers. Such mailing companies are also covered under this service.

.....”

5. In these circumstances, we do not find any reason to hold that the activity done by the appellant is covered under the head of 'Mailing list compilation and Mailing service'. The appeal is therefore, allowed.

(Pronounced in the open court on 14.09.2022)

(RAMESH NAIR)
MEMBER (JUDICIAL)

(RAJU)
MEMBER (TECHNICAL)