

**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE
TRIBUNAL, KOLKATA
EASTERN ZONAL BENCH : KOLKATA
REGIONAL BENCH - COURT NO.2**

Service Tax Appeal No.75767 of 2021

(Arising out of Order-in-Original No.18/ST/Commissioner/2020 dated 17.03.2021
passed by Commissioner, CGST & Central Excise, Patna-I Commissionerate.)

M/s. Kanhaiya Singh Vision Classes Private Limited

(In front of Gate NO.2 of Kendriya Vidyalaya, Kankarbagh, Patna-800020.)

...Appellant

VERSUS

Commissioner of CGST & CX, Patna-I Commissionerate

.....Respondent

(Central Revenue Building, Bir Chand Patel Path, Patna, Bihar)

APPEARANCE

Shri Ankit Kanodia & Ms. Megha Agarwal, both Advocates for the Appellant
Shri J.Chattopadhyay, Authorized Representative for the Revenue

**CORAM: HON'BLE SHRI P.K. CHOUDHARY, MEMBER(JUDICIAL)
HON'BLE SHRI K. ANPAZHAKAN, MEMBER(TECHNICAL)
FINAL ORDER NO. 75458/2023**

DATE OF HEARING : 4 May 2023
DATE OF DECISION : 18 May 2023

Per : P.K. CHOUDHARY :

The present appeal has been filed by M/s. Kanhaiya Singh Vision Classes Pvt. Ltd. (the Appellant) being aggrieved by the Order-in-Original dated 17.03.2021 passed by the Ld. Adjudicating authority by which the demand of service tax of Rs. 3,71,52,384/- for the period from April 2013 to 31st December, 2016 by invoking the extended period of limitation under the proviso to Section 73(1) of the said Finance Act, 1994 was confirmed along with imposition of interest and equivalent penalty under the provisions of the Finance Act, 1994.

2. Briefly stated, the facts of the case are that the Appellant is engaged in providing coaching services to the aspiring students for qualifying the competitive entrance examinations into the engineering/medical institutes and is thus registered under the service tax regime having registration no. AADCK9129JSD001.

3. Based on investigation conducted by the DGGI team, the Appellant was issued with a show cause notice dated 24.09.2018 alleging non/short payment of service tax on coaching services on the basis of the documents seized by the department. It was the allegation of the department that the Appellant has artificially bifurcated the consideration received towards coaching services (under the head tuition fee from students) in to other categories such as Income from Bag trade, Sale of I Card, Sale of Prospectus/Form and Publication Section L. Thus, it was alleged that the Appellant is also liable to pay service tax on consideration received towards Publication Section L, major being the income from sale of publication section L. It was also alleged that the Appellant has reported less turnover in their audited financial statement for certain years and thus the demand came to be calculated on the basis of the documents seized by the department by ignoring the audited financial statements.

4. The Appellant had replied to the SCN by stating that the value of sale of books cannot be included in the value of coaching services as the same was sale of goods and cannot be taxed as per Notification No. 12/2003-ST dated 20.06.2003. The Appellant had also placed reliance on several decisions of the Tribunal in this respect.

5. The LD. Adjudicating authority while passing the impugned OIO dated 17.03.2021 confirming the demand of tax with equivalent penalty, held that the Appellant had bifurcated its revenues in to sale of publication income to pay less service tax on coaching services and that there was no documents provided by the Appellant to prove income from sale of books as a separate stream of income independent from coaching services. As regards figures taken from seized records to levy service tax ignoring the balance sheet figures, the Ld. Adjudicating authority was of the view that the Appellant has misdeclared values in audited balance sheet and thus the computation of the department in the SCN was correct to levy service tax.

6. Being aggrieved, the Appellants have preferred the present appeal before the Tribunal.

7. The Appellants in their additional written submission have referred to the following judgments in their favour on the issue of non-inclusion of sale value of books in consideration charged for coaching services-

- a. CHATE COACHING CLASSES PVT. LTD. Versus COMMR. OF C. EX., AURANGABAD 2013 (29) S.T.R. 138 (Tri. - Mumbai)
- b. CEREBRAL LEARNING SOLUTIONS PVT. LTD. Versus COMMR. OF C. EX., INDORE 2013 (32) S.T.R. 379 (Tri. - Del.)
- c. M/s Smart Value Products & Services Ltd. Vs. Commissioner of Central Goods & Service Tax, Noida in APPEAL No.ST/70817/2018-CU[DB] vide Final Order No. 71643/2018 dated 26.07.2018
- d. PINNACLE Versus COMMISSIONER OF C. EX., CHANDIGARH 2011 (24) S.T.R. 453 (Tri. - Del.) as affirmed by Hon'ble Punjab and Haryana High Court in 2017 (49) S.T.R. 277 (P & H)
- e. RUBIC'S ROSTRUM COACHING PVT. LTD. Versus C.C.E. & CUS., LUCKNOW 2018 (10) G.S.T.L. 258 (Tri. - All.)
- f. MAJOR KALSHI CLASSES PVT. LTD. Versus COMMISSIONER OF C. EX., ALLAHABAD 2021 (46) G.S.T.L. 148 (Tri. - All.)
- g. M/s. Mastermind Classes Pvt. Ltd. Versus CCE, Indore 2015 SCC OnLine CESTAT 3224
- h. Commissioner of Service Tax-IV Versus Eurokids International Ltd. 2019 SCC OnLine CESTAT 1252

The short issue to be decided in the present case is whether income from sale of publication of books has to be added in the consideration for coaching services provided by the Appellant.

8. We find that the issue is no longer res integra as the Tribunal in various decisions held that the value of books cannot be included in the consideration for coaching services.

9. We would like to refer to the decision of the Tribunal in the case of **CEREBRAL LEARNING SOLUTIONS PVT. LTD. Versus COMMR. OF C. EX., INDORE 2013 (32) S.T.R. 379 (Tri. - Del.)** wherein it was held by thus :-

"6. In our considered view, the clarification in the Board Circular dated 20-6-2003 is misconceived, clearly illegal and contrary to the statutory exemption Notification dated 20-6-2003. Where the legislature has spoken or in exercise of its statutory power exemption is granted by the Central Government under Section 93 of the Act, the CBEC has no manner of power, authority or jurisdiction to deflect the course of an enactment or the exemption granted. Grant of exemption from the liability to tax is a power exclusively authorised to the Central Government under Section 93 of the Act. This statutory provision accommodates no participatory role to the Board. In seeking to engraft restrictions on the generality and plenitude of the exemption granted by the Central Government, the CBEC transgressed into the domain of the Central Government under Section 93 of the Act, a course of action clearly prohibited. On the above analysis, that part of the clarification of the CBEC which engrafts a condition that the exemption notification is applicable only where the value of the course material (sold by a commercial or training institute) answers the description of standard text books which are priced, is illegal, unauthorised and of no effect. No notice or cognition can be taken by any authority or such unauthorised exertions by the CBEC. If this illegal and unauthorised condition, imposed on the generality of exemption granted by the Central Government vide Notification No. 12/2003-S.T., dated 20-6-2003 is ignored, as it must, the assessee/appellant is clearly entitled to the benefit of the exemption.

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10. *The exemption notification is clear and admits no restrictive clauses. Consequently, the assessee is entitled to relief.*

11. *The appeal must therefore succeed. The order-in-appeal confirming the adjudication order is therefore quashed. There shall however be no order as to the costs."*

10. Further, the Tribunal in the case of **M/s Smart Value Products & Services Ltd. Vs. Commissioner of Central Goods & Service Tax, Noida in APPEAL No.ST/70817/2018-CU[DB] vide Final Order No. 71643/2018 dated 26.07.2018** held as "*We further take note on the fact that appellant is engaged in only selling of study material to the students of these coaching centers and paying VAT on sale of these study material. Therefore, in the light of decision of this Tribunal in the case of M/s Chate Coaching Classes Pvt. Ltd. (Supra), the amount collected by the appellant by selling of study material is not taxable service under the Finance Act, 1994.*"(para 6)

11. Thus, having regard to the above noted judgments we find that since the value of sale of books is separately identifiable from the audited financial statements of the Appellant and there are documents to show that such sale was also made not to the students but to third parties also, the question of levy of service tax on such value from sale of books/publication cannot be sustained.

Accordingly, the impugned order is set aside and the appeal filed by the Appellant is allowed with consequential relief, if any.

(Order pronounced in the open court on 18 May 2023.)

Sd/
(P.K. CHOUDHARY)
MEMBER (JUDICIAL)

Sd/
(K. ANPAZHAKAN)
MEMBER (TECHNICAL)