CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
HYDERABAD

REGIONAL BENCH

Service Tax Appeal No. 1828 of 2010

(Arising out of Order-in-original No.21/2010 (RS)(denovo) dated 10.05.2010 passed by Commissioner of Customs & Central Excise, Visakhapatnam-I)

The Commissioner of Customs & Central Excise **...Appellant**
Visakhapatnam-I, Commissionerate
Port Area,
Visakhapatnam

Verses

Vikas Educational Institutions Ltd **...Respondent**
10-1-28, Asilmetta,
Visakhapatnam

APPEARANCE:
Mr. P. Amaresh, A.R. for the appellant/Revenue
None for the Assessee/Respondent

CORAM:
HON'BLE MR. P.V. SUBBA RAO, MEMBER (TECHNICAL)
HON'BLE DR. RACHNA GUPTA, MEMBER(JUDICIAL)

FINAL ORDER NO.30008/2023

Date of Hearing: 10.01.2023
Date of Decision:01.02.2023

PER: DR. RACHNA GUPTA

The present appeal has arisen out of show-cause notice No. 1/22/2005 dated 12.4.2006 vide which the demand of service tax of Rs.90,70,443/-, towards the liability of the appellant for allegedly rendering commercial training and coaching services during the period 1.7.2003 to 31.3.2005, was proposed. A differential service tax of Rs. 31,762/- was also proposed to be recovered from the appellant along with the proportionate interest and appropriate penalties. The said show-cause notice was decided vide order-in-original 03/2007-08 dated

30th May 2007 while confirming the said proposal. The order was challenged before CESTAT SZB, Bangalore. Vide Final Order No. 1140/08 dated 14/08/2010 (Inclusive of stay order 991/08) the matter was remanded to the Commissioner for examining the issue *denovo* and to pass an order in accordance with law. The Tribunal also directed the appellants to produce all records as that of requisite ledgers etc. before the said adjudicating authority to show that the amount received by the appellant was not meant for providing Commercial Coaching Service and commissioner was required to pass an order after examining those records and the contentions of the appellant in accordance with law. Pursuant to said directions of remand that the order-in-original 21/2010 dated 10th May 2010 has been passed holding that the demand made against the respondent/assessee is not sustainable. Neither interest was levied nor penalty was imposed. Being aggrieved of the said order, Revenue is in appeal before this Tribunal.

2. We have heard Shri P.Amaresh, learned Authorized Representative for the appellant/Revenue and none appeared for the Respondent assessee Shri P. Amaresh learned A.R. appearing on behalf of the appellant/department has submitted that the impugned order-in-original has been examined by a Committee of Chief Commissioners who have found the order not to be legal and proper for the reasons as were stated by the committee in Order No. 25/2010 dated 23.08.2010. It was observed in the said order that the assessee/respondent was found receiving income in the nature of application fee, admission fee, coaching fee etc. The amounts received under those heads were also found mentioned in the annual returns of

the assessee and the assessee/respondents were receiving payments on their own behalf. If any fee was received by Vikas Educational Society (VES) separate receipts found to have been issued. Assessee respondent himself had admitted Vikas Educational Institutions Ltd (VEIL) to be an interdependent organization of Vikas Educational Society (VES) for providing infrastructural facilities to VES. But payments have been received in the name of coaching fee/tuition fee by both the entities VES and VEIL though against separate receipts. It is impressed upon that the same was sufficient proof to the fact that M/s VEIL were rendering commercial coaching services which is taxable, but the respondent assessee has failed to discharge its liability towards the said service. It is finally submitted that Commissioner has apparently failed to appreciate the fact that both VEIL & VES are one and the same. They have merely forged bills in order to evade payment of duty. Hence, the order holding that VEIL is not liable to pay service tax is liable to be set aside. Appeal is accordingly prayed to be allowed. Revenue relies on the following case laws:

1) Sri Chaitanya Educational Committee Vs CCCE & ST Guntur [2019-TIOL-2286-CESTAT-HYD-LB]
2) CC Mumbai Vs M/s Dilip Kumar & Company & Ors [2018-TIOL-302-SC-Cus-CB]

3. None appeared for the respondents. Present is an old appeal and there are several adjournment requests and absence of respondents. On 05.09.2022 it was directed that if the respondent fails to appear on the next date of hearing the appeal will be heard and disposed of ex-parte. On 09.01.2023 also none appeared on behalf of the respondent

and the matter got listed for 10.01.2023 i.e. the date of hearing. Further, adjournment is therefore, opined unjustified and effect will be nothing but the unnecessary delay. However, we find that there are written submissions of respondents on record. From several adjournment requests and absence of Respondent we opine that he does not seem interested to pursue the appeal. Hence, we proceed to decide the matter ex-pare on merits.

4. It appears from the written submissions that the respondent has impressed upon that the adjudicating authority has clearly appreciated that it was actually VES which was having recognition for giving intermediate education/CBSE etc. from the respective statutory authorities. In addition to their regular curriculum, they were also giving coaching of competitive examinations and a part of bill was made in the name of VEIL. Since VES on its own could not run the classes for imparting commercial coaching being non-profitable organization it was probably that VES chose to raise the bills in the name of VEIL. Commissioner has also appreciated that there was no evidence except for bills/ profit and loss accounts to prove that the VEIL was capable of imparting any commercial coaching taking separate teaching staff, have separate pay rolls etc. based o,n these observations, that the demand against the assessee respondents has rightly been dropped. Appeal accordingly is prayed to be dismissed.

5. After considering the rival contentions, of the parties, perusing the entire record, we observe the following to be admitted facts of the case.

- VEIL was a company incorporated under the Companies Act by the managing committee of VES to own/create infrastructural facilities.
- VES was a non-profit making organization registered under the Societies Registration Act to impart education/knowledge having recognition from AP State Government, CBSE and other statutory bodies. VES and VEIL are inter-related.
- VES could not impart commercial coaching.
- Both VES and VEIL are under common management and in the eyes of the government authorities VEIL was also providing necessary infrastructural facilities to enable VES to get the necessary permissions/approvals/recognitions form various government authorities.
- There was no separate agreement entered into between VEIL and VES for providing infrastructure facilities as there was common management.
- VES being a non-profit organization for rendering education, it was not supposed to impart commercial coaching to the students for IIT/JEE, AIEEE, CET entrance examination and other national level engineering and medical competitive examinations. Admittedly for providing such commercial coaching with support of VEIL , the assessee respondent was backed by VES.
- Another cogent acknowledgment of respondent as was also pointed by learned D.R. at the time the Tribunal was hearing this matter at the first round of litigation, was that VEIL was collecting the amount from the students in the name of tuition fee.

6. All the above admissions make it clear that commercial coaching has been provided against collecting same fees as has been collected by VEIL, respondents and though by VES also but through separate receipts. VES/VEIL are interdependent entities. Irrespective of the fact that VEIL was providing infrastructural support to VES, but the fact remains is that VES could not provide said commercial coaching. Admittedly VEIL was collecting money from the students in the name of tuition fee only. There is a verbal submission that the said amount was actually for infrastructural support to VES, in the guise of tuition fee. But we are of the opinion that said oral submission is not sufficient to falsify the document in the form of receipt regarding collection of money by VEIL/respondent in the name of tuition fee for providing commercial coaching.

7. These findings are sufficient for us to hold that findings of Commissioner in the order under challenge are merely presumptive in nature. The adjudicating authority has categorically recorded that VES being a non-profitable organization was not allowed to run the classes for imparting commercial coaching but in addition to their regular curriculum they were giving coaching in competitive examinations and were raising bills in the name of VEIL. The Commissioner has categorically recorded in para 11 as follows:-

> "Viewed in this context, it was probable that VES chose to raise the bills in the name of VEIL."

7.1 In para 14 also, the adjudicating authority records as follows:-

"Nothing was brought on record except for stating that VEIL conducted commercial coaching. Except for the bills/profit & Loss Accounts, it was not brought out whether VEIL was capable of imparting any commercial coaching having separate teaching staff, having separate pay rolls etc. The investigation did not conclusively prove that VEIL actually rendered the said services. No corroborative material was placed on record or collected through the investigation that VEIL actually undertook the Commercial Coaching attracting levy of Service Tax. It also points towards the fact that VES was not at all covered in the investigation and no notice was proposed to them. This leads to a strange situation where a person who might have violated the statute was not made a noticee whereas the one who had an incidental role was proceeded against which is not correct."

7.2 From the perusal of these findings, we observe that once the documents as that of bills/profit & Loss accounts of the assessee respondent were before the authorities showing that VEIL had been collecting money from the students of commercial coaching in the name of tuition fee and that VES was not capable of imparting such commercial coaching, the evidence with respect to infrastructural facilities being provided by VEIL to VES to impart such coaching becomes absolutely redundant to falsify that VEIL was collecting money in the name of tuition fee for Commercial Coaching. There is no denial that Commercial Coaching was being provided and that VES couldn't provide the same. There is also no denial to the fact that respondent VEIL was separately incorporated company though having similar management as that of VES.

8. There is no dispute that imparting of coaching for competitive examinations such as IIT/JEE, AIEEE etc is a taxable service in terms of Section 65(26)of Finance Act 1994, in view of the above discussion, we hold that the findings of Commissioners in Order under challenge are in

total ignorance of the evidence on record rather are held to be purely presumptive and is based on the probabilities to just accept the submission in defence. On the contrary, the taxable services were being admittedly imparted and VES was not competent to impart these things. VEIL though is admitted to be interdependent/same organizations as that of VES, but we hold that it is VEIL which was providing taxable service as that of Commercial Coaching against collecting an amount in the name of tuition fee. Hence we hold that the demand of service tax for providing taxable/commercial coaching services against VEIL has wrongly been dropped by the Commissioner.

9. With these observations we set aside the order-in-original/order in challenge. Consequent there to the appeal filed by the Revenue stands allowed.

(Order pronounced in the open Court on 01.02.2023)

(P.V. SUBBA RAO)
MEMBER (TECHNICAL)

(Dr. RACHNA GUPTA)
MEMBER(JUDICIAL)

Neela reddy