
(2014) 202 ECR 375 : (2014) 45 GST 20 : (2014) 34 STR 161

Delhi High Court

Case No: CEAC 21 of 2013, CM Application 5462 and 5463 of 2013

Commissioner of
Service Tax

APPELLANT

Vs

Ashu Exports Pvt. Ltd.

RESPONDENT

Date of Decision: March 10, 2014

Acts Referred:

Central Excises and Salt Act, 1944 - Section 35(G)#Finance Act, 1994 - Section 93

Citation: (2014) 202 ECR 375 : (2014) 45 GST 20 : (2014) 34 STR 161

Hon'ble Judges: S. Ravindra Bhat, J; R.V. Easwar, J

Bench: Division Bench

Advocate: Satish Kumar, for the Appellant; Sujit Ghosh and Mr. Arjun Harkuli, for the Respondent

Judgement

S. Ravindra Bhat, J.

The question of law sought to be urged by the Revenue in this appeal u/s 35(G) of the Central Excise Act is ""whether

the term ""vocational training institute"" in Notification No. 24/2004-ST covers the respondent"" and ""whether the courses offered by it are exempt

for the period 01.07.2003 to September, 2008"". The assessee in this case at the relevant time in 2003 was running courses which is to impart

procedural and practical skill based training in areas such as export import management, retail management and merchandising. Concededly, these

courses were not accredited or certified by any Central or State Government or statutory authority such as AICTE. The appellant-Service Tax

Department issued a notice alleging that the respondent had not paid service tax for the relevant period even though the activities carried on by it

are taxable service u/s 65(zzc).

2. It appears that the Section 65(zzc) was introduced w.e.f. 1.7.2003 by the Finance Act, 2003. It was notified to come into force w.e.f. 1.7.2003

by a Notification No. 7/2003 dated 20.6.2003. The assessee relied upon an earlier Notification, i.e., no. 9/2003 as well as the subsequent

Notification No. 10/2004 to contend that its Institution was not covered by the section. However, the adjudicating authority confirmed the demand

upon the assessee. It, therefore, approached the Tribunal which relied upon its previous judgment in Wigan & Leigh College (India) Ltd. v. Joint

Commissioner, S.T., Hyderabad, 2007(8) TMI 61 (CESTAT).

3. Counsel for the Revenue contends that the impugned judgment of the Tribunal following Wigan & Leigh and distinguishing other judgments

which took a different view is incorrect. It was contended that according to the Revenue's understanding the exemption Notification applied in

terms only to vocational training imparted by Institutes such as ITI and State sponsored or recognized educational training institute generally

imparting technical and vocational skills immediately after the 10+2 grade. Learned counsel submitted that a coaching centre or a commercial

training centre cannot be construed as widely as the assessee's institution which imparts managerial and management skills akin to MBA. He relied

upon an order of CESTAT in M/s. Sadhana Educational and People Development Services Ltd. v. Commissioner of Central Excise, 2013(12)

TMI 735 of the Mumbai Bench in this regard and stated that Wigan & Leigh has been dissented by this order.

4. Section 65(zzc) as it originally stood when it was notified w.e.f. 1.7.2003 reads as follows:-

(26) "commercial training or coaching" means any training or coaching provided by a commercial training or coaching centre;

5. It would be relevant to notice that concurrently with the introduction or levy of vocational institutions in 2003, the Government deemed it fit to

exempt that activity almost simultaneously by the Notification dated 20.6.2003. The only condition that Notification attached was that it would be

enforced till 29.2.2003; in all other particulars it was nearly identical with the exemption Notification of 10.9.2004 quoted in the preceding portion

of this judgment. On 4.2.2004 by a Notification No. 1/2004-ST, the period of validity of the previous Notification was extended to 30.6.2004. It

was in these circumstances that on 10.9.2004 exemption Notification No. 24/2004-ST relied upon by the assessee was brought into force. We

may also notice that subsequently in 2010 by a Notification, the following Explanation was substituted in place of the Explanation that existed

earlier:-

Notification: 3/2010-S.T. dated 27-Feb-2010

No. 24/2004-ST, ., amended

In exercise of the powers conferred by sub-section (1) of section 93 of the Finance Act, 1994 (32 of 1994), the Central Government, on being

satisfied that it is necessary in the public interest so to do, hereby makes the following amendment in the notification of the Government of India in

the Ministry of Finance (Department of Revenue) No. 24/2004-Service Tax, dated the 10th September, 2004, published in the Gazette of India,

Extraordinary, vide number G.S.R.598(E), dated the 10th September, 2004, namely:-

In the said Notification, in the Explanation, for (i) and the definition against it, the following item shall be substituted, namely:-

(i) vocational training institute"" means an Industrial Training Institute or an Industrial Training Centre affiliated to the National Council for Vocational

Training, offering courses in designated trades as notified under the Apprentices Act, 1961 (52 of 1961).

2. This notification shall come into force on and from the date of its publication in the Gazette of India.

6. Simultaneously, the Department also issued another Notification on 27.2.2010 amending the previous Notification of 10.9.2004 to the following

effect:-

In exercise of the powers conferred by sub-section (1) of section 93 of the Finance Act, 1994 (32 of 1994), the Central Government, on being

satisfied that it is necessary in the public interest so to do, hereby makes the following amendment in the notification of the Government of India in

the Ministry of Finance (Department of Revenue) No. 24/2004-Service Tax, dated the 10th September, 2004, published in the Gazette of India,

Extraordinary, vide number G.S.R.598(E), dated the 10th September, 2004, namely:-

In the said Notification, in the Explanation, for (i) and the definition against it, the following item shall be substituted, namely:-

(i) vocational training institute"" means an Industrial Training Institute or an Industrial Training Centre affiliated to the National Council for Vocational

Training, offering courses in designated trades as notified under the Apprentices Act, 1961 (52 of 1961).

2. This notification shall come into force on and from the date of its publication in the Gazette of India.

7. It is evident from the above narration that the levy was sought to be introduced for the first time w.e.f. 1.7.2003. Simultaneously, vocational

training institutes defined specifically by a Notification No. 9 were exempted. It is not in dispute that the exemption continues even till date. The

only difference being that by the latest Notification of 2010, the expression had been narrowed to mean that ""those institutes affiliated to the

National Council for Vocational Training and offering courses in designated trade as noticed in the Apprentice Act"".

8. As to what is vocational has been left advisedly open to the authorities. Wigan & Leigh was a case where the institution was unrecognized and

not affiliated to AICTE or any technical body. The contention-that was ultimately accepted by the Tribunal as to the meaning of the expression

vocational training institute"" of ""coaching centre"" is found in the following extract of that judgment:-

2. The Senior Counsel pointed out that the Notification does not envisage registration of a "Vocational Training Institute". He submits that so long

as the trainees who achieve skills seek employment or undertake self employment directly after such training or coaching, then they are eligible for

the benefit of the Notification. It is his submission that the training which is being granted to the trainee is only with an objective to find a vocation.

The appellant is a training institute and providing coaching and training in business management and fashion technology, advertising graphic design,

media studies to the students. They are covered under the category of ""Vocational Training or Coaching Services"". The question in this appeal only

pertains to the extension of benefit of Notification No. 9/2003-S.T, dated 20.6.2003 and the Commissioner (A) has given a narrow interpretation

to deny the benefit solely on the ground that the assessee are not registered with AICTE as a "Vocational Institute". He submits that the order is

not legal and proper.

9. The Tribunal noticing the specific term of what is meant by vocational training institute, i.e., computer training institute or recreation training

institute or a coaching centre, was of the opinion that so long as the broad nature of the activity is to impart skills to enable the beneficiaries to seek

employment or undertake self employment directly, the conditions were satisfied. In M/s. Sadhna Educational and People Development Services

Ltd. v. Commissioner of Central Excise, 2013(12) TMI 735, the findings of the Tribunal-whose order is an elaborate one-mostly containing the

extract of the entire syllabus and brochure of the institution is as follows:-

8. Learned Advocate for the appellant has quoted a catena of case laws listed earlier. We have gone through each of the cases. We find the facts

of the present case are distinguishable as none of these cases cover a general M.B.A. program with content of the program as wide and academic

as in the present case. We do not consider it necessary to discuss each of these cases here.

10. 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.

11. For these reasons, this Court is of the opinion that the Tribunal did not fall into error in following its previous ruling in Wigan & Leigh (supra).

The question of law framed is accordingly answered against the Revenue and in favour of assessee. The appeal is accordingly dismissed along with

all the pending applications.