

***IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Date of decision: 21st May, 2013

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WP(C) No. 3513/2012

**M/S INDIAN INSTITUTE OF
AIRCRAFT ENGINEERING**

..... Petitioner

Through: Mr. Suhail Dutt, Sr. Adv. with Mr.
Ranjeet Kumar Jha, Mr. Sankalp
Goswami & Mr. S.S. Gill, Advs.

Versus

UNION OF INDIA & ORS.

..... Respondents

Through: Mr. Anuj Aggarwal with Mr. Gaurav
Khanna, Adv. for R-1&5.
Mr. Satish Kumar, Adv. for
Commissioner, Service Tax.

CORAM :-

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

RAJIV SAHAI ENDLAW, J

1. The petition impugns,
 - (i) the Instruction No.137/132/2010-ST dated 11.05.2011 of the respondent no.2 Central Board of Excise & Customs (CBEC) to the effect that Flying Training Institutes providing training for obtaining Commercial Pilot Licence (CPL) and Aircraft Engineering Institutes for obtaining Basic Aircraft Maintenance Engineering Licence (BAMEL) come in the category of coaching centres as laid down in Section 65(27) of the Finance Act, 1994 and therefore assessable to service tax; and,

- (ii) the show cause notice dated 30.03.2012 issued by the respondent no.4 The Additional Commissioner of Service Tax to the petitioner.

2. Notice of the petition was issued and counter affidavits have been filed by the respondent no.2 CBEC and the respondent no.5 Directorate General of Civil Aviation (DGCA). Vide interim order dated 01.10.2012, the decision in the adjudication proceedings pursuant to the show cause notice aforesaid was directed to abide by the orders in this petition.

3. It is *inter alia* the case of the petitioner:

- (i) that the petitioner is an Aircraft Maintenance Engineering Training School approved by the DGCA for providing Aircraft Maintenance Engineering (AME) training and conducting examination as per the course approved by the DGCA under the Aircraft Act, 1934 (the Act) and the Aircraft Rules, 1937 (the Rules) and the Civil Aviation Requirements (CAR) issued by the DGCA under Rule 133B of the Rules supra;
- (ii) that the petitioner issues a certificate approved by the DGCA to candidates who successfully complete the approved training curriculum and successfully pass the examinations as per the approved course syllabus;

- (iii) that the DGCA fully controls such training institutes by prescribing syllabus, number of seats per session, manner in which the exam is to be conducted as well as the manner in which the certificate is to be issued, though the candidates get the final licence i.e. BAMEL from the DGCA after qualifying further examination conducted by the DGCA;
- (iv) that though service tax in India was introduced in the year 1994 but commercial training or coaching services were brought under the service tax net only with effect from 01.07.2003 by insertion of Clause 65(105)(zzc) in the Finance Act by making services provided by a commercial training or coaching centre in relation to commercial training or coaching as a taxable service;
- (v) however vide Section 65(27), preschool coaching and training centre or any institute or establishment which issues any certificate or diploma or degree or any educational qualification recognized by law for the time being in force, was excluded from the meaning of commercial training or coaching centre;
- (vi) that though Section 65(27) was amended with effect from 01.05.2011 to remove the exclusion earlier provided to preschool coaching and training centre or any institute or establishment which issues educational qualification recognized by law but vide Notification No.33/2011-ST dated 25.04.2011

with effect from 01.05.2011, similar exemption was granted to preschool and educational qualifications and training that are recognized by law and thus the scope of levy of the service tax remains the same even after the said amendment; and

- (vii) that the Instruction dated 11.05.2011 is in contravention of Section 65(105)(zzc) read with Section 65(27) of the Act and Notification dated 25.04.2011 and the show cause notice and the demands raised on the petitioner for service tax are consequently liable to be quashed.

4. The respondent no.2 CBEC in its counter affidavit has pleaded:

- (i) that the petitioner is not issuing any certificate, degree or diploma recognized by law;
- (ii) that the petitioner has been issuing Certificate of Course Completion;
- (iii) that the Certificate of Approval given by the DGCA to the petitioner clearly states that the petitioner institute is approved by the DGCA to impart training and prepare the candidate to appear in the DGCA Basic License Examination only, clearly confirming the fact that the petitioner has only been approved as a training centre to train the students to appear in the Basic License

Examination of DGCA and not to issue any degree, diploma or certificate recognized by law;

- (iv) that the contention of the petitioner that the AME course conducted by it is approved by the DGCA is not correct;
- (v) that the exclusion provided under the definition of Commercial Training & Coaching Centre is not applicable to training centres imparting coaching and training for appearing in examinations;
- (vi) that actually AME degree, diploma or certificate is issued by the DGCA to students who have successfully cleared the examination conducted by it and the role of the petitioner is limited to train the candidates to appear for the examination conducted by the DGCA;
- (vii) that the DGCA itself does not qualify as an institute recognized by law;
- (viii) that since the petitioner is collecting the fee directly from the students and not through the DGCA, it cannot avail the exemption under Notification No.10/2003 dated 20th June, 2003;
- (ix) that the petitioner has contravened the service tax laws with an intention to evade the same.

5. The DGCA in its counter affidavit has pleaded:

- (i) that it is a subordinate office of Ministry of Civil Aviation, Government of India and is a regulatory body in the field of Civil Aviation, primarily dealing with the safety issues;
- (ii) it is the responsibility of DGCA to ensure safe air transport services and enforcement of civil air regulations, air safety and air worthiness standards;
- (iii) that the DGCA regulations are in the form of the Act, Rules, CAR and the Aeronautical Information Circulars etc.;
- (iv) that it is the DGCA which is responsible for issue of AME and Pilot licences as per the International Civil Aviation Organization (ICAO) standards;
- (v) that the Central Examination Organization is one of the Directorates of the DGCA which conducts the written examination for issue of Pilot and AME licences;
- (vi) AME licences are issued under the provision of Rule 61 of the Aircraft Rules;

- (vii) Rule 133B provides that DGCA can approve the AME institutes / schools for imparting *ab-initio* training to the candidate so that they can appear in DGCA AME licence examination;
- (viii) that the detailed requirements for approval of AME institutes / schools are given in CAR Section 2, Series 'E' Part VII;
- (ix) that the DGCA approves the AME training institutes after satisfying with the statutory requirements with regard to syllabus, facilities, equipment, mock-ups, training aids, faculty, library and other related infrastructure;
- (x) that the approval of AME institute is valid for one year and renewable for every year through audit of the institute which includes availability of infrastructure and training performance of the institute;
- (xi) that in accordance with para 8.4 of CAR, AME institutes are required to issue Course Completion Certificates to the AME students who have successfully passed the Semester Examination and completed On Job Training for a period of six months;

- (xii) that the format of this Course Completion Certificate is approved by DGCA;
- (xiii) that the records of certificate and student details are required to be maintained by the respective AME training institutes;
- (xiv) that the AME is a specialized course which enables the students to appear in AME licence examination conducted by the DGCA; and
- (xv) that the DGCA is not empowered to grant / recognize degree or diploma courses offered by any institute / organization.

6. The senior counsel for the petitioner, the counsel for the Service Tax Department and the counsel for the DGCA have been heard.

7. The senior counsel for the petitioner has invited attention to:-

- (a). Section 5 of the Act empowering the Central Government to make Rules *inter alia* for securing the safety of aircraft operation including for licensing of persons employed in the operation, manufacture, repair or maintenance of aircraft;

- (b). Rule 54 of the Rules providing for certification of aircrafts required by the Rules to be signed by appropriately licensed engineers or authorized persons qualified under the terms and conditions of the licence, authorization or approval, to carry out *inter alia* repair and maintenance and to whom certificates authorized by organizations approved by DGCA have been issued;
- (c). Rule 61 empowering the Central Government to grant licences, authorizations and approvals to persons to act in the capacity of Aircraft Maintenance Engineers in connection with repair and maintenance of aircrafts and particularly to Sub Rule (2)(A)(c) providing for a requirement of four years in the field of aircraft maintenance engineering and further providing for relaxation for one year for applicants who have satisfactorily completed training in institutes approved by DGCA;
- (d). Rule 133A empowering the DGCA to issue directions *inter alia* through Civil Aviation Requirements *inter alia* relating to maintenance of aircraft; and,
- (e). Rule 133B defining approved organization as an organization engaged *inter alia* in the activity of training schools and requiring such organization to comply with

requirements specified in the Civil Airworthiness Requirements.

8. It is the contention of the senior counsel for the petitioner that the Course Completion Certificates issued by the petitioner are thus recognized by law and the petitioner is thus exempt from Service Tax. It is contended that the Department was also earlier taking the same view and the Minutes of the Meeting held on 19th June, 2012 of the CBEC in this regard were handed over in the course of hearing. Reliance is placed on para 13 of ***Pahwa Chemicals (P) Ltd. Vs. Commissioner of Central Excise, New Delhi*** (2005) 2 SCC 720 laying down that CBEC has no power to issue instructions or orders contrary to the provisions of the Act or in derogation of the provisions of the Act and on ***Siemens Ltd. Vs. State of Maharashtra*** (2006) 12 SCC 33 to contend that where a notice is issued with premeditation, a writ petitioner would be maintainable thereagainst, since such a notice ceases to remain in the realm of a show-cause notice. Reliance is also placed on ***Commissioner of Central Excise, Bolpur Vs. Ratan Melting & Wire Industries*** (2008) 13 SCC 1. It is also argued that the writ remedy is available owing to the Assessing Officer being bound by the Instructions aforesaid and being thus not in a position to decide the issue of leviability of Service Tax on the petitioner. It is argued that the Tax Authorities have already made up their mind and the hearing before them will now not serve any purpose.

9. The counsel for DGCA has contended that the DGCA only gives approval to the institute and the certificate/diploma issued by the said

institute is not recognized by the DGCA which is concerned with aircraft safety only.

10. The counsel for the Service Tax Department has argued that the Instructions are not binding on *quasi* judicial authorities and the writ remedy is thus not available. It is argued that the question for adjudication is the meaning to be ascribed to the words “recognized by law”. It is contended that the petitioner institute only makes the candidates eligible but the examination is conducted and the licence issued by the DGCA.

11. We have bestowed our thoughtful consideration to the controversy.

12. We do not find any merit in the objection taken as to the very maintainability of this petition on the ground of it being open to the petitioner to before the Assessing Authority, also urge that the certificate/degree/diploma/qualification awarded by the petitioner is recognized by law and the petitioner is thus exempted from payment of service tax. The CBEC having already, after examination, taken a decision in this regard, the petitioner is correct in contending that the hearing in this regard, even if technically in law, still open before the Assessing Officer, would be a formality with the Assessing Officer unlikely to take a view contrary to that of the Director, as contained in the impugned Instruction. Moreover, the matter having been argued before us, and being of recurring nature, likely to arise qua other such institutes also, it is deemed expedient to return findings on merits of exigibility also.

13. Section 65(27) as it stood till 30th April, 2011 excluded from the domain of commercial training or coaching centres, ‘training centres or establishments issuing any certificate or diploma or degree or any educational qualification recognized by law’. Even after 30th April, 2011, though the part of Section 65(27) making such exclusion has been deleted but the Notification dated 25th April, 2011 supra issued in exercise of powers under Section 93 of the Finance Act has exempted ‘coaching or training leading to grant of a certificate or diploma or degree or any educational qualification which is recognized by any law from the whole of Service Tax leviable under Section 66 of the Finance Act’.

14. We have wondered, what could be the reason for exempting from payment of service tax those training or coaching centres, even though commercial, whose certificate/degree/diploma/qualification is ‘recognized by law’. The only plausible reason, according to us, can be to exclude from ambit of service tax those training or coaching centres which are otherwise regulated by any law in as much as recognition of certificate/degree/diploma/qualification conferred by such training or coaching centres will necessarily entail regulation by the same law of various facets of such training or coaching centres.

15. Seen in that light, there can be no doubt whatsoever that the activities of the petitioner are very much regulated by the Act and the Rules aforesaid and the instructions/regulations issued thereunder from time to time.

16. An analysis of the counter affidavit of the DGCA as set-out hereinabove would show that, (i) an institute as the petitioner cannot be set-up without the approval of the DGCA; (ii) detailed requirements for approval have been made out in CAR Section 2, Series 'E' Part VII; (iii) such approval is given only after the institution satisfies DGCA that it has the facilities, equipments, training aids, faculty, library and other infrastructure for providing such training and follows the syllabus prescribed by the DGCA to be coached/trained/imparted in the said institute; (iv) the approval is not a onetime approval but has to be obtained year after year and at the time of each renewal DGCA has to be satisfied of existence of the compliances/parameters; (v) the institutes are obligated under para 8.4 of CAR to issue Course Completion Certificates to the students who have successfully passed the examination and completed the requisite On Job Training; (vi) that the format of the said Certificate is also approved by the DGCA; (viii) on the basis of the said Course Completion Certificate and On Job Training certificate, the students are entitled to appear in the examination held by DGCA for grant of licence to be authorized to render services of aircraft repair and maintenance.

17. The Act was enacted to make provision for control of manufacture, possession, use, operation, sale, import and export of aircrafts. Rule 4 prohibits use or operation or assistance in use or operation of an aircraft save in accordance with the Rules. Thus the sale, purchase, possession and use of aircrafts is regulated by law i.e. the Aircraft Act supra. Section 5 of the said Act authorizes the Central Government to make Rules regulating all the said

facets i.e. manufacture, possession, use, operation, sale of aircrafts and also for securing the safety of aircraft operation. Section 5A of the Act also authorizes the DGCA to from time to time issue directions with respect to some of the matters for which Rules are authorized to be made and which *inter alia* includes matters relating to repair and maintenance of aircrafts, the conditions under which the aircraft may be flown, and licensing of persons engaged in the operation, repair or maintenance of aircrafts. Section 5A(2) requires all persons to whom such directions are issued to comply with the same. The CAR owe their origin and binding nature to Section 5A of the Act. Section 11 makes flying of an aircraft in a manner so as to cause danger to any person, and which danger would be implicit in flying in breach and violation of the Rules and CAR, a punishable offence. Contravention of CAR is also made a punishable offence under Section 11A of the Act. The Rules to be framed under the Act are under Section 14 of the Act subject to previous publication and under Section 14A of the Act required to be laid before each House of the Parliament and subject to modification or repeal by Parliament.

18. Part VI of the Rules deal with airworthiness of aircrafts and requires each aircraft to have a certificate of airworthiness issued under the Rules. Rule 52 thereunder prohibits carrying out by any person any modification or repair affecting safety of any aircraft in respect of which a certificate of airworthiness has been issued, save in accordance with the Rules. Rule 54 provides that the certificate of airworthiness shall be signed by appropriately licensed engineers authorized by organizations approved by DGCA. Rule

60 in Part VI defines maintenance of an aircraft as performance of works necessary for the purpose of ensuring that the aircraft is airworthy and safe including servicing of all aircrafts. Rule 60(3) prohibits flying of aircrafts unless maintenance of the aircraft has been carried out by or under the supervision of a person licensed, approved or authorized for the said purpose. Rule 61 provides for grant of licenses, authorizations and approvals to persons to act in the capacity of Aircraft Maintenance Engineers, Authorized or Approved persons, to sign in connection with repair or maintenance of aircrafts. Rule 61(2) prescribes the requirements which an applicant for the issue of a Maintenance Engineer's license is required to satisfy. Though the applicants are required to possess the minimum qualification of three years' diploma in any branch of engineering or degree in any branch of engineering together with minimum practical experience of four years in the field of aircraft maintenance engineering but the Central Government has been authorized to grant relaxation with respect of the minimum requirement for engineering graduates, if they appear in Aircraft Maintenance Engineer's license examination. As far as the requirement of minimum practical experience of four years is concerned, the Central Government is authorized to relax the same by one year for applicants who have satisfactorily completed training in institutes approved by the DGCA. Rule 133A empowers the DGCA to *inter alia* issue notices to Aircraft Owners and Maintenance Engineers and publication entitled CAR and issue directions *inter alia* relating to maintenance of aircraft. Rule 133B in Part XII B deals with Approved Organizations engaged *inter alia* in the activity of training schools and requires such organization to

comply with such requirements as may be specified in Civil Airworthiness Requirements. Rule 161 makes contravention of the Rules punishable to the extent laid down in Schedule VI to the Rules.

19. The DGCA has with reference to Rule 61 supra provided for relaxation of one year to the minimum practical experience of four years for applicants for the license of Aircraft Maintenance Engineer and has issued CAR F.No.11-690/Sec-2/E-VIII/2012-AI(2) dated 30th May, 2008 dealing with approval of training institutes and which *inter alia* provides:-

- (a). that the period of training in the approved training institute would be counted as maintenance experience for the purpose of completing total aeronautical experience required to become eligible for appearing in the Aircraft Maintenance Engineering license examinations;
- (b). objectives of such training;
- (c). requirements for approval;
- (d). scope of the training;
- (e). qualification of admission into such institutes;
- (f). period of training;
- (g). holding of examinations and the content thereof;
- (h). issuance of mark-sheets to the successful candidates;
- (i). On Job Training;

- (j). issuance of a serially numbered certificate, the format of which is to be approved by the DGCA, called the Course Completion Certificate;
- (k). the syllabus for the various examinations; and,
- (l). maintenance of student records by such institutes.

20. The position which thus emerges is that:-

- A) That successful completion of Aircraft Maintenance Engineers course from an approved training school by itself does not authorize such candidate to certify the airworthiness of an aircraft or its repair or maintenance. For the same, an examination to be conducted by the DGCA is to be passed.
- B) For appearance in the said examination, it is not essential to undergo the course offered by the approved training school and others are also eligible to take the said examination.

21. Nonetheless, the law dealing with the subject of aircrafts has not left the institutes imparting such courses/training and which course completion/training makes the successful candidates eligible to one year exemption, unregulated. It is not as if anyone can start, offering such course and imparting training. The Act, Rules and CAR provide for approval of institutes such as the petitioner's. DGCA regulates the course content offered by such institute and gives relaxation to the successful candidates from such institutes in the matter of taking the examination to be conducted

by the DGCA for grant of authority/license to render services of aircraft repair and maintenance and to certify the aircraft's airworthiness. Though qua the fee etc. to be charged by such institutes there does not seem to be any restriction but the powers under the Act and the Rules in exercise of which such CAR has been issued are wide enough to also issue a direction with respect to the fee etc. to be charged by such institute.

22. The question which falls for consideration is whether the aforesaid would amount to 'recognition by law' of the Course Completion Certificate and On Job Training Certificate given by such institute.

23. The expression 'recognized by law' is a very wide one. The legislature has not used the expression "conferred by law" or "conferred by statute". Thus even if the certificate/degree/diploma/qualification is not the product of a statute but has approval of some kind in 'law', would be exempt.

24. 'Recognize' is defined, in the Black's Law Dictionary, 8th Edition as confirmation of an act done by another person as authorized, formally acknowledging the existence; and, in Concise Oxford Dictionary as acknowledging the existence, validity or legality of.

25. We are of the view that the Act, the Rules and the CAR, having provided for grant of approval to such institutes and having laid down conditions for grant of such approval and having further provided for relaxation of one year in the minimum practical training required for taking

the DGCA examination, have recognized the Course Completion Certificate and the qualification offered by such Institutes. The certificate/training/qualification offered by Institutes which are without approval of DGCA would not confer the benefit of such relaxation. Thus, the certificate/training/qualification offered by approved Institutes, has by the Act, Rules and the CAR been conferred some value in the eyes of law, even if it be only for the purpose of eligibility for obtaining ultimate licence/approval for certifying repair/maintenance/airworthiness of aircrafts. The Act, Rules and CAR distinguish an approved Institute from an unapproved one and a successful candidate from an approved institute would be entitled to enforce the right, conferred on him by the Act, Rules and CAR, to one year relaxation against the DGCA in a Court of law. The inference can only be one, that the Course Completion Certificate/training offered by such Institutes is recognized by law.

26. There can be no doubt that such recognition through the Rules framed as aforesaid and through issuance of CAR is a recognition by law, which is defined in Black's Law Dictionary, 8th Edition as the aggregate of legislation, judicial precedents and accepted legal principles and the set of rules or principles dealing with a specific area of legal systems. The Rules and the CAR aforesaid dealing with aircrafts, there can be no doubt, are law. The Supreme Court in *Narsingh Pratap Singh Deo Vs. State of Orissa* AIR 1964 SC 1793 held that a law generally is a body of rules which have been laid down for determining legal rights and legal obligations which are recognized by Courts. Similarly, in *R.S. Nayak Vs. A.R. Antulay* (1984) 2

SCC 183 it was held that law includes any Ordinance, By-law, Rule, Regulation, Notification, Custom or Usage having force of law. The Rules and CAR aforesaid have been enacted in exercise of legislative power as aforesaid.

27. The reasoning in the impugned Instruction dated 11th May, 2011 that because the qualification awarded by the Institute does not culminate in automatic issuance of license/authorization by the DGCA to certify the repair, maintenance or airworthiness of an aircraft and for which purpose a further examination to be conducted by the DGCA is to be taken, in our view mixes up and confuses, 'qualification' with 'a license to practice on the basis of that qualification'. An educational qualification recognized by law will not cease to be recognized by law merely because for practicing in the field to which the qualification relates, a further examination held by a body regulating that field of practice is to be taken. Immediate instance can be given of the qualification in the field of law. Though by amendment of the recent years, the right to practice law on the basis of the said qualification has been made subject to clearing /passing a Bar Exam to be held by the Bar Council of India , the same does not make the qualification of law not recognized by law. The recognition accorded by the Act, Rules and CAR supra to the Course Completion Certificate issued by the Institutes as the petitioner cannot be withered away or ignored merely because the same does not automatically allow the holder of such qualification to certify the repair, maintenance or airworthiness of an aircraft and for which authorization a further examination to be conducted by the DGCA has to be passed/cleared.

28. We are therefore of the view that the Instruction aforesaid holding the petitioner to be assessable to Service Tax is contrary to Section 65(27) and the Notification dated 25th April, 2011. Accordingly the said Instruction and the show cause notices given to the petitioner are quashed. The Rule is made absolute and the writ petition is disposed of.

No costs.

RAJIV SAHAI ENDLAW, J

CHIEF JUSTICE

MAY 21, 2013
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