IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

THURSDAY, THE 3RD DAY OF SEPTEMBER 2015/12TH BHADRA, 1937

WP(C).No. 14878 of 2007 (U)

PETITIONER(S):
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1. **SAJITH.A.S.,**
   G-TECH COMPUTER EDUCATION, KILIMANOOR,
   THIRUVANANTHAPURAM DIST.

2. **SAJEED.A.M,**
   G-TECH COMPUTER EDUCATION, VENJARAMOODU,
   THIRUVANANTHAPURAM DIST.

3. **SANOJ.S.,**
   G-TECH COMPUTER EDUCATION, NALAMCHIRA,
   THIRUVANANTHAPURAM DIST.

4. **SREEKUMAR.V.H.,**
   G-TECH COMPUTER EDUCATION, AMBALATHARA,
   THIRUVANANTHAPURAM DIST.

5. **NISSAR.S.,**
   G-TECH COMPUTER EDUCATION, ATTINGAL,
   THIRUVANANTHAPURAM DIST.

6. **SHANAVAZ.E.,**
   G-TECH COMPUTER EDUCATION, ATTINGAL,
   THIRUVANANTHAPURAM DIST.

7. **ANILKUMAR,**
   G-TECH COMPUTER EDUCATION, NEYYATTINKARA,
   THIRUVANTHAPURAM DIST.

8. **MUHAMMED IRSHAD,**
   G-TECH COMPUTER EDUCATION, PERUMTHANNI,
   THIRUVANANTHAPURAM.

9. **BARET RONALD,**
   G-TECH COMPUTER EDUCATION, POOVAR,
   THIRUVANANTHAPURAM.

10. **ANEESH KUMAR.S.,**
    G-TECH COMPUTER EDUCATION, VATTIYOORKAVU,
    THIRUVANANTHAPURAM.

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11. SUNIL K.S.,
G-TECH COMPUTER EDUCATION, VELLAYAMBALAM,
THIRUVANANTHAPURAM.

12. MANILAL.B.D,
G-TECH COMPUTER EUCATION, VARKALA,
THIRUVANANTHAPURAM.

13. RANJITH PAUL,
G-TECH COMPUTER EDUCATION, SREEKARYAM,
THIRUVANANTHAPURAM.

14. BENSAN K.SAM,
G-TECH COMPUTER EDUCATION, POTHENCODE,
THIRUVANANTHAPOURAM DIST.

15. SURESH KUMAR.A.R.,
G-TECH COMPUTER EDUCATION, MALAYINKIL,
THIRUVANANTHAPURAM DIST.

BY ADV. SRI.S.ABDUL RAZZAK

RESPONDENT(S):
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1. UNION OF INDIA,
REPRESENTED BY SECRETARY TO GOVT OF INDIA,
MINISTRY OF FINANCE, NEW DELHI-01.

2. THE COMMISSIONER OF CENTRAL EXCISE,
CUSTOMS & SERVICE TAX, I.C.E.BHAVAN, PRESS CLUB ROAD,
STATUE, THIRUVANANTHAPURAM-695 001.

BY ADV. SRI.THOMAS MATHEW NELLIMOOTIL,SC
SRI.JOHN VARGHESE,SC,CEN.BOARD OF EXCISE

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 03-09-2015, ALONG WITH WPC.NO. 5510/2009 AND CONNECTED CASES, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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WP(C).NO.14878/2007

APPENDIX

PETITIONER'S EXHIBITS:

P1 COPY OF THE CERTIFICATE OF AFFILIATION

P1(A) COPY OF THE PRIST UNIVERSITY CERTIFICATE

P1(B) COPY OF THE PRINT OUT FROM THE WEB-SITE OF PRIST UNIVERSITY

P2 COPY OF THE ISO CERTIFICATE FOR G-TEC

P3 COPY OF THE ICDL

P4 COPY OF THE 1ST PETITIONER'S FRANCHISEE AGREEMENT WITH M/S. GTEC

P5 COPY OF THE CERTIFICATE OF MERIT ISSUED TO STUDENTS

P6 COPY OF THE NOTIFICATION NO.10/2003 ST DATED 20/6/2003

P7 COPY OF THE NOTIFICATION NO.24/2004 ST DATED 10/9/2004

P8 COPY OF THE NOTICE C.NO.IV/6/15/2007-PREV/2076 DATED 23/02/2007

P9 COPY OF THE PETITIONER'S STATEMENT OF OBJECTION DATED 22/3/2007

P10 COPY OF THE SUMMONS C.NO.IV/6/15-2007/PREV/4499 DATED 27/04/2007

P11 COPY OF THE NOTIFICATION NO.19/S005-ST, DATED 07/6/2005

P12 COPY OF THE EXHT.P7 AS AMENDED BY EXHT .P11

RESPONDENT'S EXHIBITS:

R1(A) COPY OF THE NOTIFICATION NO.9/2003-ST DATED 20/06/03

R1(B) COPY OF THE PRINT OUT DOWN LOADED FROM THE WEBSITE SHOWING THAT AMERICAN CENTRAL UNIVERSITY HAVE ONLY ONE AFFILIATE CENTRE IN INDIA

R1(C) COPY OF THE LETTER C.NO.IV/06/102/2007/PREV DATED 28/5/2007 RECEIVED FROM THE ASSISTANT COMMISSIONER (PREV, CALICUT COMMISSIONERATE

/TRUE COPY/

P.S.TO JUDGE

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A.K.JAYASANKARAN NAMBIAR, J.

W.P.(C).NO.14878 OF 2007
W.P.(C).NOS.5510, 9372, 19687 & 27387 OF 2009,
W.P.(C).NO.38452 OF 2010,
W.P.(C).NOS.3291 & 11010 OF 2011

Dated this the 3rd day of September, 2015

J U D G M E N T

In all these writ petitions, the petitioners are franchisees of M/s.G-TEC Computer Education, which is an Accredited Vocational Institute for computer courses such as CCA, CDTP, CHAM & Word Processing under the National Institute of Open Schooling, which comes under the administrative jurisdiction of the Ministry of Human Resources, Government of India. In the writ petitions, they are aggrieved by the notices issued to them by the authorities under the Central Excise Department, who are vested with the administrative supervision of the levy and collection of service tax under the Finance Act, 1994, as amended. By the notices issued to them, the writ petitioners were asked to take out registration as service providers under the Finance Act, 1994 as amended, and also to furnish details with regard to the value of taxable services rendered by them during the period in question. The petitioners approached this Court through the present writ petitions claiming that they were not service providers as contemplated under the head of 'Commercial Training and Coaching Services', and therefore, they were not obliged to take out registration as service providers under that head and furnish any returns or other documents as sought for by the respondents. By an interim order passed in the writ petitions, the respondents were restrained from proceeding further against the petitioners in terms of the provisions of the Finance Act, 1994 as amended. The interim orders passed in favour of the petitioners continue to hold good even today, save in W.P.(C).No.3291/2011, where the interim order was vacated by an order dated 7.12.2011. The prayer in all these writ petitions is for a declaration that the petitioners are not liable to pay service tax as applicable to Commercial Training and Coaching Centres, and for quashing the notices issued to the petitioners.

2. Counter affidavits have been filed by the respondents stating that the services rendered by the petitioners would come within the scope of 'Commercial Training or Coaching Services', and therefore attract the levy of service tax. Reliance is also placed by counsel for the respondents on the decision of the Supreme Court in **Commissioner of Central Excise v. Sunwin Technosolution P. Ltd. - [2011 (21) S.T.R. 97 (SC)]**, which interprets an exemption

notification that exempted Vocational Training Institutes and clarifies that a Computer Training Institute would not come within the ambit of the exemption that was extended to Vocational Training Institutes.

3. I have heard Sri.S.A.Razzak, the learned counsel appearing for the petitioners in all the writ petitions, Sri.Thomas Mathew Nellimoottil, the learned Standing counsel for the Central Board of Excise and Customs and also Sri.John Varghese, the learned Senior Standing counsel for the respondents.

4. On a consideration of the facts and circumstances of the case as also the submissions made across the bar, I find that the dispute in these writ petitions is essentially with regard to the applicability of the levy of service tax on the services rendered by the petitioners to their clients. It is the stand of the respondents that the services rendered by the petitioners would come within the ambit of "Commercial Training or Coaching Services" which is defined in the Finance Act, 1994, as amended, to mean any training or coaching provided by a commercial training or coaching centre. A "Commercial training or coaching centre" is in turn defined under the Finance Act, 1994, as it stood during the relevant period, as meaning

any institute or establishment providing commercial training or coaching for imparting skill or knowledge or lessons on any subject or field other than the sports, with or without issuance of a certificate and includes coaching or tutorial classes but does not include preschool coaching and training centre or any institute or establishment which issues any certificate or diploma or degree or any educational qualification recognised by law for the time being in force. It is relevant to mention here that the said definition has undergone amendments with effect from 8.4.2011, and in subsequent years. In these writ petitions, this Court need not concern itself with the later amendments as the writ petitions cover the period prior to 8.4.2011. The contention of the writ petitioners is essentially that their Institute would not come within the ambit of the term "Commercial Training or Coaching Centre" for the purposes of levy of service tax. Learned counsel for the petitioners would, in particular, point to the exclusive part of the definition of "commercial training or coaching centre" that excludes from the ambit of the definition inter alia any institute or establishment which issues any certificate or diploma or degree or any educational qualification recognised by law for the time being in force. It is his case in the writ petitions that inasmuch as the institutes in question conduct courses that lead to the issuance of a certificate that is recognised by law, the institutes would not qualify to be included in the definition of “Commercial Training or Coaching Centre” for the purposes of levy of tax.

5. Per contra, it is the submission of the learned Standing counsel for the respondents that, by a separate exemption notification that was made applicable to vocational training institutes, recreational training institutes and computer training institutes, an exemption from the levy of service tax under the head of 'Commercial Training or Coaching Centre' was initially envisaged for the aforesaid three categories of training institutes. By a later amendment, the specific exemption that was given to Computer Training Institutes was taken away by the Central Government. It is their stand, therefore, that the omission of Computer Training Institutes in the subsequent notification clearly indicated the legislative intention of not providing an exemption to such Institutes, and therefore, the petitioners would also not be entitled to claim the benefit of the said exemption.

6. On a consideration of the rival submissions, I find that even if the stand of the respondents, which is based on the decision of the Supreme Court in **Commissioner of Central Excise v. Sunwin**

Technosolution P. Ltd. - [2011 (21) S.T.R. 97 (SC)] is accepted, the petitioners still have a case that the Institutes run by the petitioners fall within the exclusion in the definition of 'commercial training or coaching centre' which excludes an institute or establishment which issues a certificate that is recognised by law from the purview of tax under the head of 'commercial training or coaching centre'. This is an aspect that will have to be considered by the adjudicating authorities when determining the applicability of the levy of service tax to the services rendered by the petitioners. I note that, in some of these writ petitions, the Commissioners of Central Excise of the Thiruvananthapuram, Ernakulam and Calicut Divisions have been made parties. Taking note of the fact that these writ petitions cover assessees falling within the administrative jurisdiction of the respective Commissioners under the above three divisions, I direct the respective Commissioners of Central Excise of each of these divisions of Thiruvananthapuram, Ernakulam and Calicut, to consider the case of the petitioners in these writ petitions, and issue suitable instructions so as to issue show cause notices to the writ petitioners, if there is a prima facie finding by the Commissioners as regards the applicability of the levy of service tax to the writ petitioners in these cases. I make it clear that any demand of service tax from the writ petitioners, for any of the periods covered in these writ petitions, shall only be pursuant to the issuance of a show cause notice and a formal adjudication that is to follow, and no coercive steps will be taken till such time as the adjudication is complete. I make it clear that if the Commissioners arrive at a prima facie view regarding the liability of the petitioners to the levy of service tax, it will be open to them to call for the details regarding the value of taxable services rendered by the petitioners during the relevant period before causing show cause notices to be issued to the petitioners. If any such notices, calling for information, are received by the petitioners, then the petitioners shall promptly furnish the details sought for by the Commissioners so that an expeditious adjudication in the matter can be effected.

The writ petitions are closed with the aforesaid directions.

A.K.JAYASANKARAN NAMBIAR
JUDGE

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