

***HON'BLE SRI JUSTICE G.CHANDRAIAH**
&
HON'BLE SRI JUSTICE CHALLA KODANDA RAM

+C.E.A. No. 41 of 2015

%17-06-2015

#The Commissioner of CustomsAppellant

Vs.

\$ M/s.Sri Chaitanya Educational Committee
Respondents

!Counsel for the Petitioner: Sri V.Gopalakrishna Gokhaley, S.C. for
Income-Tax

Counsel for the Respondent:

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>Head Note:

? Cases referred:

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JUDGMENT:- (per Hon'ble Sri Justice G.Chandraiah)

Miscellaneous Order No.22603/2014, dated 23.09.2014 passed by the Customs, Excise & Service Tax Appellate Tribunal (for brevity "CESTAT"), Bangalore directing the respondent herein to deposit an amount of Rs.6.00 crores as pre-deposit pending consideration of the appeal by exercising its power of waiver under the Central Excise Tax as applicable to Sales-tax is assailed by the Department. The following substantial question of law arises from the impugned order passed by the Tribunal for adjudication:

"Whether the Hon'ble Tribunal has followed the directions given by the Hon'ble A.P. High Court vide orders dated 19.01.2010 in C.E.Appeal No. 301 of 2010 and dated 19.10.2011 in C.E.A.No. 110 of 2011 and the directions of the Hon'ble Supreme Court vide orders dated 06.01.2012 in Civil Appeal No. 230 of 2012 in ordering pre-deposit of Rs.6.00 crores which is much below the 1/3rd of service tax demand?"

The principal contention raised by the learned Standing Counsel for Customs and Central Excise appearing for the appellant is that the Apex Court in its order dated

19.10.2011 had directed that 1/3rd of the demand raised against the assessee has to be deposited as pre-deposit

towards service tax. Further, this Court, by order dated 04.09.2013 in W.P. No. 24764 of 2013, while disposing of the writ petition permitted the respondent herein to remit pre-deposit amount of Rs.25.00 crores and refused to interfere with the order dated 15.07.2013 passed by the Tribunal in Miscellaneous Application No. 27138 of 2013 which was filed at the instance of the respondent.

Heard the learned Standing Counsel for the Revenue and perused the material placed on record.

The impugned order relates to the demand of service tax for Rs.33,97,36,617/- for the period 2011-2012 with interest and penalty of Rs.10,000/- apart from the penalty of Rs.100/- every year to be paid continuously towards service tax or 1% of such tax per month. Challenging the order of the Commissioner, the respondent filed an appeal and pending adjudication, sought waiver of pre-deposit. One of the principal contentions raised by the respondent herein is that they are not running commercial training or coaching centre in toto, but in fact they are also running regular intermediate course i.e. educational institution providing education. So far as the taxable service under the Service Tax is concerned, it is only a commercial training or coaching. In that view of the matter, what exactly is the commercial training or coaching is yet to be decided by the third member on account of the difference of opinion vide

Interim Order No.IO/46/2014, dated 28.02.2014. In that view of the matter, the total liability of tax itself would come only to Rs.10,71,65,822/-. Further, there are various other components in the fee calculated by the respondent and the same do not form part of the taxable service.

The detailed submissions were considered objectively by the Tribunal which are recorded as under:

“We have already taken a view that *prima facie* we are not convinced that just because the appellants charged a composite fee and there is no break-up details available, service tax cannot be levied on the Commercial Training or Coaching conducted by the appellants. At the same time, we have to accept the fact that the issue needs a much more detailed consideration in terms of law, facts and the meaning of word such as “leading to” used in the notification to come to any conclusion. Further, the valuation which is also an issue will have to be considered in detail which is not possible today at this stage. The learned counsel on behalf of the appellant had submitted a worksheet and in the worksheet, the appellants had excluded the games fee, lab fee, Internal Exam fee/charges, sale of applications, PRO collection A/c. and other fee. We are unable to understand nor did we ask the learned counsel to explain the nature of PRO collection fee and other income fee in view of the fact that these two fees did not really amount to substantial portion of the demand. Therefore, we have left it for the final hearing to understand. As regards lab fee and Internal Exam fee/charges, it was submitted by the learned counsel that whether it is for engineering or medical entrance exam, laboratory is a must and the type of laboratory required for ordinary intermediate course and for entrance course could be different. Further, he also submitted that more than Rs.141/- crores has been realized for Internal Exam fees which shows the importance attached to the Internal Exams by the appellant. Frequent conduct of examinations, feedback of such examinations and repeated exams no doubt would enhance the ability of the candidates to face the entrance exam and complete it successfully. Therefore, we find some substance in the arguments of the learned special counsel that Internal Exam

fee cannot be ignored. He also submitted that amount collected for sale of applications also cannot be ignored because without application there cannot be admission. It is the submission of the learned special counsel that the net taxable amount if the lab fee, Internal Exam Fee, sale of applications, PRO collection, other income fee, etc. are added, the total amount of service tax payable would come to nearly Rs.30 crores and he submits that following the decision of the Hon'ble Supreme Court which invoked even extended period, 1/3 of the tax should be required as pre-deposit.

We have also made out observations that while *prima facie*, appellant may be liable to tax, question as to what are the components which go into the intermediate course and what are the components of fee that can be attributed to Commercial Training or Coaching requires a very detailed consideration. Therefore, even if we hold that the service tax is liable, there would still be dispute about valuation and further even the liability itself the appellants have not accepted and are challenging the same. Appellant's view is that intermediate course is the main course and Commercial Coaching is incidental. Under these circumstances, we consider that if the appellant deposits an amount of Rs.6.00 crores within 8 weeks and report compliance that would be sufficient for hearing the appeal. Accordingly, the appellant is directed to deposit an amount of Rs.6.00 crores (Rupees Six Crores Only) and report compliance on 16.12.2014. Subject to compliance with the above requirement, the requirement of pre-deposit of balance dues is waived and stay against recovery is granted."

The view taken by the Tribunal as extracted above is a possible view that at any rate, the orders passed by the Tribunal on earlier occasions which were modified by this Court really do not lay down any law, as such, they are not required to be adhered to as binding precedents. In the cases referred to by the learned Standing Counsel for the Department-appellant, the Apex Court as well as this Court, considering the total amount of demand, the facts in those cases and the facts as presented before the Courts at the relevant point of time, directed certain amounts to be deposited either exercising their discretion

or refusing to exercise discretion. However, in the present case, the Tribunal had made a reasoned order after taking into consideration the facts presented before it. It is not in dispute that the Tribunal has the discretion and power to grant waiver. The Tribunal has exercised its discretion after taking into consideration the facts on record. With regard to the question which has been framed for consideration by this Court as stated supra, the earlier orders being not precedents, there is no irregularity committed by the Tribunal in not adhering to its earlier orders. In the facts of the present case, the question of law raised in the appeal is required to be answered in favour of the assessee and against the revenue.

Hence, this appeal is devoid of merits and dismissed. No order as to costs.

As a sequel to the dismissal of this appeal, interim orders, if any passed, shall stand disposed of as infructuous.

G. CHANDRAIAH, J

17.06.2015

CHALLA KODANDA

RAM,J

Note: L.R. copy to be marked

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