

Sharayu Khot.

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

CENTRAL EXCISE APPEAL NO. 207 OF 2017

The Principal Commissioner of Service Tax ...Appellant

Versus

M/s. Shree Chanakya Education Society ...Respondent

Ms. P.S. Cardozo, a/w Mr. J.B. Mishra, for the Appellant.

Ms. Padmavati Patil, for the Respondent.

**CORAM : M.S. SANKLECHA &
RIYAZ I. CHAGLA, JJ.**

DATE : 5 September 2018

ORDER :

1. This Appeal under Section 83 of the Finance Act, 1994 ("*the Act*") read with Section 35G of the Central Excise

Act, 1944 challenges the order dated 10th July 2015 passed by Customs, Excise and Service Tax Appellate Tribunal (for short “*the Tribunal*”).

2. The Revenue urges only the following two questions of law for consideration :-

(i) Whether in the facts and circumstances of the case and in law was the Tribunal correct in holding that the extended period of limitation is not invokable?

(ii) Whether in the facts and circumstances of the case and in law was the Tribunal justified in setting aside the demand for extended period and consequently penalty under Section 78 of the Finance Act, 1994?

3. The Respondent-Assessee is a public charitable trust

registered with the Charitable Commissioner, Pune under the Maharashtra Public Trust Act and also exempted from tax under the Income Tax Act, 1961. The Respondent renders the service of imparting education.

4. It was the understanding of the Respondent that being a registered charitable institution, they are not liable for service tax under the Act. However, the Revenue issued Show Cause Notices dated 31st January 2007 and 21st October 2008 to the Respondent seeking to recover the service tax under the head “Commercial Training or Coaching Center” for the period from 1st July 2003 to 1st April 2006 and 1st April 2006 to 31st March 2008 respectively. The two notices also required the Respondent to show cause why penalty under Section 78 of the Act should not be imposed under the Act. The Respondent contested both the Notices on merits as well as on the limitations. However, the Commissioner (Central Excise) confirmed both the Show Cause Notices including the extended period of limitation and also imposed a penalty equivalent to the

service tax payable under Section 78 of the Act.

5. Being aggrieved, the Respondent filed Appeals to the Tribunal. By the impugned order dated 10th July 2017, the Tribunal confirmed the chargeability to tax even in respect of charitable institutions engaged in rendering the educational service. This was by following the larger Bench decision of the Tribunal in the case of *Great Lakes Institute of Managment Limited Vs. Commissioner of S.T., Chennai*¹. However, the impugned order allowed the Respondent-Assessee's Appeal to the extent both the Show Cause Notices were beyond the normal period of limitation and consequently, also deleted the equivalent penalty imposed under Section 78 of the Act. This on the ground that the issue whether a charitable institution could be brought to tax under the Act was a debatable issue and finally came to be resolved by the Tribunal in *Sri Chaitanya Educational Committee (SCEC) Vs. the Commissioner*

¹ 32 STR 305

*Customs and Service Tax, Guntur*². In fact the impugned order dated 10th July 2015 does record the fact that there was a difference of opinion amongst members constituting the Division Bench in *Sri Chaitanya Educational Committee* (supra) on the issue of charitable institution being chargeable to service tax under the head Commercial Training or Coaching. Thus, it had referred the issue to a third member who while holding that even charitable institution rendering the service of commercial training or coaching are chargeable to tax under the Act, it recognized the fact that this issue was not free from doubt as was evident from reference to the third member. Consequently, the demand in *Sri Chaitanya Educational Committee* (supra) has restricted to the normal period of limitation and also the impugned order dated 10th July 2015 placed reliance upon the above order of *Sri Chaitanya Educational Committee* (supra) and restricted the demand in both the Notices to the extent of the demand being within the normal period of limitation and also deleted the penalty.

² 2016(41) STR 241

6. The grievance of the Revenue is the deletion of the demand beyond the normal period of limitation and setting aside of equivalent penalty under Section 78 of the Act. Ms. Cardozo, the learned Counsel appearing in support of the Appeal reiterates the finding of the original Authority.

7. We find that it is undisputed before us that the issue of a charitable institution rendering the service of Commercial Training and Coaching being chargeable to service tax under the Act was a debatable issue before the decision in ***Sri Chaitanya Educational Committee*** (supra) was rendered on 1st June 2015. In fact reference of the above issue to a third member in ***Sri Chaitanya Educational Committee*** (supra) itself evidences that fact that prior to its decision, a party could have a bonafide belief that a charitable institution rendering the service of Commercial Training and Coaching is not chargeable to service tax under the Act. Thus, no fault can be found in the present facts with the impugned order of the Tribunal restricting the demand only to that extent of normal period of limitation and

deletion of equivalent penalty under Section 78 of the Act. This as the Tribunal found on facts and on the basis of the law that the Respondent was under a bonafide belief that no service tax is payable by a charitable institution rendering the service of Commercial Training and Coaching.

8. In the above view, the questions of law as proposed do not give rise to any substantial question of law. Hence, not entertained.

9. Accordingly, the Appeal is dismissed. No order as to costs.

[RIYAZ I. CHAGLA J.]

[M.S. SANKLECHA, J.]