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

Date of decision: 28th February, 2020

+ SERTA 21/2019

THE INDIAN INSTITUTE OF
PLANNING MANAGEMENT

..... Appellant

Through: Mr. Sumit Wadhwa, Adv.

versus

THE COMMISSINER OF
SERVICE TAX, DELHI

..... Respondent

Through: Mr. Amit Bansal, SSC with Mr. Aman
Rewaria and Ms. Vipasha Mishra,
Advs.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE C. HARI SHANKAR

JUDGMENT

28.02.2020

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1. This appeal has been preferred by the Indian Institute of Planning and Management, under section 83 of the Finance Act, 1994 read with section 35G of the Central Excise Act, 1944, against the dismissal of its application on 8th March, 2019, by the Customs, Central Excise and Service Tax Appellate Tribunal, New Delhi (CESTAT), preferred for rectification of mistake in the Final order and judgement dated 20th March, 2018, whereby, the benefit of the extended period was denied on the ground that the Appellant had not invoked the plea, or that it was a registered as a not-profit organization under the Societies Registration Act, 1860.

2. The appellant-assessee is a society situated in Chhatarpur pahadi, New Delhi and is registered under the Societies Registration Act, 1860, who conducts various management courses.

3. On 10th February, 2006, the Directorate General Central Excise Intelligence issued a Show Cause Notice to the appellant alleging that the appellant was evading the payment of Service Tax on the fees collected for the various academic and training courses under the category of 'Commercial Training and Coaching Services'.

4. The Show Cause Notice was finally adjudicated by the respondent *vide* Order-in-Original dated 24th January, 2012, by Commissioner, Service Tax Commissionerate, New Delhi, confirming the demand of Service Tax, along with interest and penalties to the extent of Rs. 8,08,000/-.

5. Consequently, post the order of review preferred by the appellant-assessee, the Respondent preferred an appeal before the CESTAT, while the appellant-assessee filed its cross-objections against the confirmation of demand.

6. It is averred that during the course of arguments before the CESTAT, the revenue and the appellant-assessee submitted their written statements on 8th and 12th March, 2018 respectively, and on the 20th March, 2018 the appeal by the revenue was allowed by the CESTAT, to the extent of the dropped Service Tax demand along with the interest and penalties.

7. The relevant portion of the final order of the CESTAT is reproduced

hereinbelow:

“14. The next issue for consideration is whether extended period of time could be invoked in the present case for confirmation of Service Tax demand. Revenue has relied on the Tribunal decision in the case of Unitech Southcity Educational Charitable Trust and others. In the said decision the appellant in that case was held to be liable for payment of Service Tax under the category of "Commercial Training or Coaching Centre" for the reason that the courses being run lead to a Degree by the Foreign University but the demand was restricted to normal time limit. The reason cited in the order for such restriction is the retrospective amendment carried out by the Finance Act, 2010 in the definition of Section 65 (27) wherein an "Explanation" was inserted w.e.f. 01/07/2003. The Explanation is relevant only in respect of a "Commercial Training or Coaching Centre" which is registered as an Organization carrying out activity without profit motive. In the facts of the present case this aspect of IIPM is not in debate. This plea has neither been taken before the Adjudicating Authority nor before us. Consequently, we are of the view that the case of *M/s Unitech Southcity Educational Charitable Trust and others* is distinguishable to this extent from the facts of the present case.

15. It is on record that IIPM neither took registration nor registered themselves with Department up to 22/07/2005. On the said day the registration was taken only at Bangalore even though IIPM has Institutes in many other places. They also did not pay any Service Tax or file ST-3 Returns even though the tax on Commercial Training or Coaching Centre was levied w.e.f. 01/07/2003. Since they have failed to obtain registration or file returns or even intimate the Department of the activities undertaken, the Department is fully justified in issuing show cause notice to demand of Service Tax along with interest by invoking the extended period of time.

16. In view of the above discussions we find that Adjudicating Authority has erred in dropping the demand of the Service Tax by considering the activities as falling outside the scope of Commercial Training or Coaching Centre. For the reasons set out above we conclude that the impugned order is not sustainable. We set aside the impugned order to the extent of dropping of Service Tax demand and uphold the entire demand of Service Tax raised in the show cause notice dated 10/02/2006. Such demand will be payable along with interest under Section 75. IIPM will also be liable to pay penalty equal to the Service Tax demanded under Section 78 as well as under Section 77 of the Finance Act, 1994. Since penalty under Section 78 is upheld, we do not impose penalty under Section 76.”

(Emphasis supplied)

8. Aggrieved by the observation of the CESTAT in the final order dated

20th March, 2018 that the plea invoking the extension of time period had not be taken since it was neither contended before the adjudicating authority nor the CESTAT, the appellant-assessee preferred a rectification of mistake application, under Section 35C of the Central Excise Act, 1944, on 13th September, 2018.

9. This rectification of mistake application was dismissed by the CESTAT *vide* the impugned order dated 8th March, 2019, while holding that the scope of rectification of mistake was limited. The findings of the CESTAT merit reproduction as under:

“7. By means of this ROM, the appellant has advanced detailed arguments against the final order. It has been submitted that the appellant is not conducting training programmes leading to MBN BBA degree of the international Management Institute, Europe. The words appearing in para 2 of the order does not lead to such finding. Hence we find no need for carrying out any correction.

8. The appellant appears to be aggrieved by the findings of the Tribunal not restricting the demand, to the normal time limit which was extended in the decision in the case of M/s Unitech South City. It has also been submitted in this case that the appellant was a Society registered under the Society Registration Act, 1860 and were availing the exemption under Section 10(23c) of the Income Tax Act.

We have considered the arguments advanced by both sides on this issue. The decision of the Tribunal not to extend the benefit of bonafide belief in the lines of the decision in case of M/s Unitech has been taken after due deliberation and consideration of the entire record of the case. If the appellant is aggrieved with such finding, the right course of action would be to challenge the order in the appropriate appellate forum.

9. We note that the scope of the rectification of the mistakes application is very limited. Only mistakes which are apparent on the face of the record and which do not require long drawn process of arguments by both sides, may be rectified. It is well settled law that applicant cannot seek review of the order in the guise of rectification of mistakes. This view finds support in the decision of Hon'ble Supreme Court in case of Commissioner of Central Excise Kolkata vs. ASCU Ltd. reported in [2003(151) ELT (481) (SC)]. Further, such views are to be found in the decision of the Apex Court in case of Commissioner of Central Excise, vs RDC Concrete: India Pvt. Ltd. reported in [20 11(270) ELT 625(SC)], as

also in case of Honda Power Products vs. Commissioner of Income Tax, Delhi [2008(221)ELT(11) (SC)].”

(Emphasis supplied)

10. Aggrieved thereagainst, present appeal has been preferred.

11. The following substantial questions of law thus arise:

- i. Whether the Final order by the CESTAT, dated 20th March, 2018, suffers from any error apparent on face of record?
- ii. Whether, therefore, the CESTAT has wrongly dismissed the rectification of mistake application?

12. We have heard, Mr. Sumit Wadhwa, learned counsel for the appellants and Mr. Amit Bansal, Senior Standing counsel for the respondent.

13. Mr. Sumit Wadhwa, learned counsel for the appellants has made a pointed submission, detailing the numerous instances where the appellant has raised the contention of extended period of limitation at the various stages of adjudication. The appellants have summarized the instances in their pleadings as follows:

“S. No.	Nature of document	Relevant para no.	Relevant page no. (internal)	Extract of the relevant portion
1.	Show cause notice	1	1	M/s. THE INDIAN INSTITUTE OF PLANNING & MANAGEMENT, a society registered under the Societies' Registration Act, 1860, having institute/branch at IIPM TOWERS, 145, RUKMANI, LAKSHMIPATHY SAL AI (MARSHALL'S ROAD), EGMORE, CHENNAI- 600008 and

				Head Office and Institute at IIPM towers, B- 27, Qutub International Area, NEW DELHI-110016.
2.	Show cause notice	3.4	2	3.4 M/s. IIPM vide their Letter dated 05/09/2005, addressed to the Assistant Director, DGCEI, Chennai stated, inter alia, that they furnished a copy of Letter dt.25/7/2005 of M/s. Amarchand & Mangaldas & Suresh Shroff & CO., counsel for IIPM, addressed to the Superintendent, Commissionerate of the service tax, Bangalore, wherein they stated that IIPM is a non-profit making Educational Institute registered under the Societies' Registration Act, 1860 to impart training and research on Techno-Economic and Socio- Economic Planning and Management; that IIPM teaches Planning and entrepreneurship course for self employment though the students accept employment in other organizations through campus interview organized by IIPM and thus IIPM claimed that their courses are vocational courses. In that Letter IIPM further stated that IIPM have been granted necessary exemption under Sec. 10 (23) (c) of the Income Tax Act, 1961; that IIPM is neither a commercial training center nor a commercial coaching center; that IIPM not assessable under Service Tax; that IIPM enjoys a national as well as International reputation and is widely regarded as one of the foremost educational institutes in the country as on date; that the issues whether IIPM is liable to pay Service Tax is yet to be adjudicated upon. In their letter dt. 05/09/2005, IIPM categorically stated that they do not have any course affirmation with any Universities/ approval from AICTE.
3.	Show cause notice	7.5	16	Moreover in the letter dt. 25/7/2005 of M/s AMARCHAND MANGALDAS & SURESH SHROFF & CO, COUNSEL for IIPM, (enclosed along with IIPM letter dt. 05/9/2005 - stated that IIPM is a non-profit making educational institute registered under Societies Registration Act, 1860 to impart training and research self-employment.
4.	Show cause notice	7.7	16	From the foregoing, it appeared that IIPM is conducting commercial training and conducting commercial training or coaching service is taxable. They are claiming that they are non-profit oriented Society Registered under the Societies Act , 1860 and enjoying exemption under the Income Tax Act, 1961. Enjoyment of exemption under the Income Tax Act, is no way concerned with the services rendered by IIPM on COMMERCIAL basis, as the income tax and service tax are two different taxes governed by different statutes providing different conditions and exemption. Exemptions under one statute

				ipso facto dose not lead to exemption under different statute providing different conditions and exemption. Exemptions under one statute ipso facto dose not lead to exemption under different statute.
5.	Show cause notice	8.1	17	The investigation carried out has appeared to reveal the following: (a) IIPM, is a society registered under the Societies Registration Act, 1860, are engaged in conducting various academic educational courses
6.	Order-in-Original dt. 24.01.2012		4	M/s. THE INDIAN INSTITUTE OF PLANNING & MANAGEMENT, a society registered under the Societies' Registration Act, 1860, -having institute/branch at IIPM TOWERS, 145, RUKMANI, LAKSHMIPATHY SAL AI (MARSHALL'S ROAD), EGMORE, CHENNAI – 600008 and Head Office and Institute at IIPM towers, B- 27, Qutub International Area, NEW DELHI-110016.
7.	Order-in-Original dt. 24.01.2012	3.4	5	3.4 :M/s. IIPM vide their Letter dated 05/09/2005, addressed to the Assistant Director, DGCEI, Chennai stated, inter alia, that they furnished a copy of Letter dt.25/7/2005 of M/s.Amarchand & Mangaldas & Suresh Shroff & CO., counsel for IIPM, addressed to the Superintendent,Commissionerate of the service tax, Bangalore, wherein they stated that IIPM is a non-profit making Educational Institute registered Under the Societies' Registration Act, 1860 to impart training and research on Techno Economic and Socio-Economic Planning and Management;that IIPM teaches Planning and entrepreneurship course for selfemployment, though the students accept employment in other Organizations through campus interview organized by IIPM and thus IIPM claimed that their courses are vocational courses. In that Letter IIPM further stated that IIPM have been granted necessaryexemption under Sec. 10 (23) (c) of the Income Tax Act, 1961 ; that IIPM is neither a commercial training center nor a commercial coaching center; that IIPM not assessable under Service Tax; that IIPM enjoys a national as well as international reputation and is widely regarded as one of the foremost educational institutes in the country as on date; that the issues whether IIPM is liable to pay Service Tax is yet to be adjudicated upon. In their letter dt. 05/09/2005, IIPM categorically stated that they do not have any course affirmation with any Universities/ approval form AICTE.
8.	Order-in-Original dt. 24.01.2012	7.4	17	Moreover in the letter dt. 25/7/2005 of M/s AMARCHAND MANGALDAS& SURESH SHROFF & CO, COUNSEL for IIPM,

				(enclosed along with IIPM letter dt. 05/9/2005 - stated that IIPM is a non-profit making educational institute registered under Societies Registration Act, 1860 to impart training and research self-employment.
9.	Order-in-Original dt. 24.01.2012	7.6	18	From the foregoing, it appeared that IIPM is conducting commercial training 2 and conducting commercial training or coaching service is taxable. They are claiming that they are non-profit oriented Society Registered under the Societies Act , 1860 and enjoying exemption under the Income Tax Act,1961. Enjoyment of exemption under the Income Tax Act, is no way concerned with the services rendered by IIPM on COMMERCIAL basis, as the income tax and service tax are two different taxes governed by different statutes providing different conditions and exemption. Exemptions under one statute ipso facto dose not lead to exemption under different statute.
10.	Order-in-Original dt. 24.01.2012	V	12	IIPM is not a commercial organization i.e. training or coaching centre but a non- profit organization. In order to levy tax in the category of commercial training or coaching services, it is not sufficient that the institution is providing coaching or training. It Is incumbent on the Department to prove that the institution is providing commercial training or coaching, which means that the coaching or training to provided as a business, activity i.e.for the purpose of making profit. The evidence on record fails not only to prove that IIPM are not engaged in providing coaching or training, it also fails to show the activities of IIPM are directed towards profit making. It is on record that IIPM is a society Registered under Section 10 (23C) of the Income Tax Act. Under Section 10 (23 C) exemption is available to educational institutions existing solely for education purposes and not for the purpose of profit.
11.	Order-in-Original dt. 24.01.2012	17.8	65	The admitted facts on record by both the department and the Noticee are as follows:- The Noticee is a society registered under the Societies Registration Act, 1860 having branch offices at several locations and Head Office in New Delhi.
12.	Order-in-Original dt. 24.01.2012	Vii i	66	That the Noticee is a society registered under the Societies Registration Act, 1860 and is conducting private courses. The notice was established in 1973 as non-profit making educational institute under the said Act.

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14. Arguing *per contra*, Mr. Amit Bansal, learned Senior Standing counsel for the respondent, vehemently contends that the scope of

rectification of mistake application is limited, and thus, the impugned order is not erroneous.

15. What falls before us, for our consideration is whether the CESTAT suffered from any error apparent on face of record in light of the contention of the appellant that it had on numerous instances invoked the plea of the extended period, as enumerated above.

16. At this juncture, the judgment of the Honorable Supreme Court in, *Commissioner of Central Excise, Mumbai v. Bharat Bijlee Ltd.*¹ is relevant, wherein the Honorable Supreme Court has held that:

“6. ...Failure to take into considerations the material evidence, which is present on the record, would certainly amount to mistake apparent on the face of record and the tribunal under the circumstances would have the jurisdiction to correct the said mistake in exercise of its powers under Section 35C(2) of the Act”

17. In light of *Bharat Bijlee Ltd.*¹, it is amply clear that the failure to consider material evidence on record, would amount to mistake apparent on the face of record, and hence, the failure of the CESTAT to take into consideration the plea of the appellant regarding extended time period, at numerous instances as delineated above, amounts to mistake apparent on the face of record. We, therefore, hold that the first substantial question of law is answered in affirmative.

18. The CESTAT, while dismissing the application for rectification of mistake, has gravely erred in failing to take note of the same, despite making a note of the argument by the counsel for the applicant therein, that the plea

¹ 2006 (198) E.L.T. 489 (SC)

invoking extended period has been iterated more than once in the order of the Adjudicating Authority. In such a circumstance, we can not uphold the impugned order and thus, the impugned order is set aside.

19. In view of the aforesaid facts, reasons and judicial pronouncements, both the substantial questions of law are answered in favour of the appellant and the order passed by the CESTAT dated 8th March, 2019 (Annexure R/1) in the application for rectification of mistake is hereby quashed and set aside and the matter is remanded back to the CESTAT, New Delhi for a fresh consideration of the application seeking rectification of mistake, preferred by the appellant in accordance with law.

20. In view of the above observation, this appeal is allowed and disposed of.

CM APPL. No. 43873/2019 (stay)

In view of the order passed in the appeal, this application is disposed of.

CHIEF JUSTICE

C.HARI SHANKAR, J.

FEBRUARY 28, 2020

r.bararia