

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI.**

PRINCIPAL BENCH,
COURT NO. IV

SERVICE TAX APPEAL NO. 50233 OF 2016

[Arising out of the Order-in-Appeal No. BHO-EXCUS-001-APP-070/15-16 dated 17/11/2015 passed by The Commissioner (Appeals), Customs, Central Excise & Service Tax, Bhopal (M.P.).]

M/s Lakshya Education Solutions Pvt. Ltd. ...Appellant
C-24, Govindpuri University Road,
Gwalior (M.P.).

Versus

The Commissioner (Appeals), ...Respondent
Customs, Central Excise & Service Tax,
Bhagya Bhavan, 178, M.P. Nagar, Zone – II,
Bhopal (M.P.).

APPEARANCE:

None for the appellant.
Shri Harsh Vardhan, Authorized Representative for the
Department

CORAM:

HON'BLE MR. P.V. SUBBA RAO, MEMBER (TECHNICAL)
HON'BLE DR. MS. RACHNA GUPTA, MEMBER (JUDICIAL)

FINAL ORDER NO. 51059/2022

DATE OF HEARING : 10.10.2022

DATE OF DECISION: 10.11.2022

P.V. SUBBA RAO

None appeared on behalf of the appellant despite notice. It is seen from records that nobody appeared on behalf of the appellant during any of the previous hearings held since 2019 also. We have heard Shri Harsh Vardhan, learned Authorized Representative for the Revenue and perused the records.

2. The facts of the case, in brief, are that M/s Lakshya Education Solutions Pvt. Ltd.¹ provided commercial training and coaching to students appearing in IIT (JEE)/AIEEE exams. It is undisputed that the coaching provided by the appellant is chargeable to service tax. The appellant paid service tax only on the amount which it charged for coaching and had not paid service tax on the cost of study materials provided by it. The study materials were in the form of loose sheets bound together in spiral binding and were provided on a continuous basis to the students. They were not standard text books and no maximum retail price was printed on them. A show cause notice dated 12.03.2013 was issued to the appellant demanding service tax on the amount collected towards the study materials on the ground that exemption towards the cost of study materials under Notification No. 12/2003-ST dated 20.06.2003 was available only if the materials were standard text books which are priced. The basis for this assertion is the CBEC's Circular dated 20.06.2003 paragraph 2.91 of which stated "in case of commercial training and coaching institutes, the exemption in respect of study materials would be available only on the sale value of standard text books, which are priced. Any study material or written text provided by study institute as a part of service which does not satisfy the above criteria will be subjected to service tax". The show cause notice, therefore, demanded service tax of Rs. 5,89,698/- from the appellant invoking extended period of

¹ appellant

limitation under proviso to Section 73 (1) of the Finance Act, 1994 along with interest under Section 75. Penalties were proposed to be imposed under Section 77 and 78 for contravention of Sections 68, 69 and 70 of the Finance Act, 1994. After following due process, the Additional Commissioner issued order-in-original dated 30.08.2013 confirming the demand and interest as proposed but had not imposed penalties under Section 77 and 78 of the Act. Both Revenue and the assessee appealed against this order before the Commissioner (Appeals). While the assessee assailed the confirmation of the demand and interest, Revenue has assailed the non-imposition of penalty by the Additional Commissioner. The Commissioner (Appeals) by order dated 17.11.2015² allowed Revenue's appeal and rejected the assessee's appeal upholding the demand of service tax and interest and further imposing a penalty of Rs. 5,89,698/- under Section 78 and a penalty of Rs. 10,000/- under Section 77 upon the assessee. The present appeal assails this order.

3. Shri Harsh Vardhan, learned Authorized Representative appearing for the Revenue has reiterated the findings of the impugned order. He further greatly assisted us in understanding the statutory provisions, the notification, the circular of the CBEC and the case laws on the issue. The short question which remains to be answered is whether the exemption Notification No. 12/2003-ST dated 20.06.2003 was available to the appellant for study materials which it had provided which, undisputedly, were

² impugned order

not standard text books printed with maximum retail price but were material printed by the appellant and bound together through spiral binding. Revenue's case is that in terms of CBEC circular dated 20.06.2003 paragraph 2.9.1 the exemption is not available. This paragraph is reproduced below :-

"2.9.1 In case of authorized service stations, maintenance or repair services, commissioning and installation services and photography services it has been provided in the law that the cost of goods and material shall not form part of the value to be subjected to service tax, if evidence (like sale invoice/bill) shows that these goods were sold. Such dispensation has, however, not been provided for other services like commercial coaching and training centers, telecom services. In this regard, a general exemption under Notification No. 12/2003-service Tax, dated 20th June, 2003 has been issued exempting that part of the value of all taxable services from service tax, which represents the cost of goods or material sold by the service provider to the receiver of such services during the course of provision of the taxable services. This exemption would be available only in cases where the sale of such goods is evidenced and the sale value is quantified and shown separately in the invoice. It is also clarified that in case of commercial training and coaching institutes, the exclusion shall apply only to the sale value of standard textbooks, which are priced. Any study material or written text provided by such institute as a part of service which does not satisfy the above criteria will be subjected to service tax.

4. The exemption notification itself reads as follows :-

"In exercise of the powers conferred by section 93 of the Finance Act, 1994 (32 of 1994), the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts so much of the value of all the taxable services, **as is equal to the value of goods and materials sold by the service provider to the recipient of service**, from the service tax leviable thereon under section (66) of the said Act, subject to condition that there is documentary proof specifically indicating the value of the said goods and materials.

Provided that the said exemption shall apply only in such cases where -

- (a) No credit of duty paid on such goods and materials sold, has been taken under the provisions of the Cenvat Credit Rules, 2004 ; or
- (b) Where such credit has been taken by the service provider on such goods and materials, such service provider has paid the

amount equal to such credit availed before the sale of such goods and materials.

2. This notification shall come into force on the 1st day of July, 2003”.

5. It is evident from the exemption notification that the exemption was available from so much of the value of all the taxable services as is equal to the value of goods and materials sold by the service provider to the recipient of service subject to the condition that there is documentary proof specifically indicating value of the said goods and materials. The exemption notification does not place any restriction on the type of goods or materials which are entitled to the exemption. As long as there is documentary proof, indicating the value of the goods and materials sold by the service provider to the service recipient, their value gets excluded from the taxable value and hence no service tax will be leviable on such goods. In respect of commercial coaching and training services, the materials in question will, obviously, be the study materials which the appellant has undisputedly provided. The documentary evidence of value of such materials is also not in dispute. The reason the exemption notification was denied to the appellant was that the CBEC circular had restricted the entitlement of this exemption notification to only such materials as constituted standard text books which have a maximum retail price printed on them. Following the CBEC circular, the Adjudicating Authority and the Commissioner (Appeals) have denied the benefit of the exemption notification. It is evident from the exemption

notification that it has been issued by the Central Government in exercise of the powers conferred under Section 93 of the Finance Act, 1994. Therefore, the exemption notification is a delegated legislation made under the power of granting exemption available to the Central Government and not to anybody else, including the Central Board of Excise and Customs³. Whenever any delegated legislation is framed, it is placed before both houses of the Parliament along with a note. Thereafter, the "Committee on subordinate legislation" of each house of the Parliament examines the notification so issued to ensure that it is consistent with the powers delegated by the law to the Government under the Act. If the Committee find that the subordinate legislation is not consistent with the main Act or is not within the powers delegated by the Act, the Committee asks the Government to modify the notification/rules which constitute the subordinate legislation. On the other hand, the CBEC circular referred to, is an administrative instruction issued by the CBEC to its own officers. Needless to say, the power under Section 93 of the Finance Act was not delegated to the CBEC and, therefore, it has no right to grant exemptions or modify the exemptions granted by the Central Government. Therefore, in our considered view, the circular by the CBEC cannot modify the scope of the exemption notification. It has also been held so by this Tribunal in the case of **M/s Cerebral Learning Solutions Pvt. Ltd. versus CCE, Indore**⁴, paragraph 4,6,10 and 11 are as follows :-

³ CBEC

⁴ 2013 (4) TMI 527 – CESTAT New Delhi

"4. The genesis of this avoidable *lis* could be traced to Circular No. 59/8/2003-S.T., dated 20-6-2003. The relevant legislative provision and the exemption granted vide Notification No. 12/2003-S.T., dated 20-6-2003 admit of no ambiguity. It is the admitted factual scenario that the assessee had provided the taxable service of Commercial Training and Coaching qua Section 65(165)(zzc) read with Section 65(26) and (27) of the Act. Section 67 of the Act enjoins that the gross amount charged by the taxable service provider/assessee on the taxable service. Accordingly, the value of the books or course material supplied by the assessee to its students/trainees is required to be included in the value of the taxable service as the gross amount charged by the service provider. The assessee however relied on the Notification dated 20-6-2003, issued by the Central Government in purported exercise of its powers under Section 93(1) of the Act. Under this general exemption notification, the Central Government exempted "so much of the value of all the taxable services, as is equal to the value of goods and material sold by the service provider to the recipient of service, from the Service Tax leviable thereon under Section 66 of the Act" subject to the condition that there is documentary proof specifically indicating the value of the said goods and services and subject to the other eligibility criteria specified in clauses (a) and (b) thereunder. That the assessee had furnished documentary proof indicating a separate value of the course material and text books supplied by it and that the assessee is entitled on this account, exemption under the Notification, is not in dispute. What has triggered Revenue's demand for service tax on the value of the course material and text books, is a Board Circular dated 20-6-2003 which seeks to "clarify" that in case of commercial training and coaching institutes, the exclusion shall apply only to the sale value of standard text books which are priced and that any study material or written text provided by such institute as part of service, which does not satisfy the above criteria will be subjected to Service Tax.

6. In our considered view, the clarification in the Board Circular dated 20-6-2003 is misconceived, clearly illegal and contrary to the statutory exemption Notification dated 20-6-2003. Where the legislature has spoken or in exercise of its statutory power exemption is granted by the Central Government under Section 93 of the Act, the CBEC has no manner of power, authority or jurisdiction to deflect the course of an enactment or the exemption granted. Grant of exemption from the liability to tax is a power exclusively authorised to the Central Government under Section 93 of the Act. This statutory provision accommodates no participatory role to the Board. In seeking to engraft restrictions on the generality and plenitude of the exemption granted by the Central Government, the CBEC transgressed into the domain of the Central Government under Section 93 of the Act, a course of action clearly prohibited. On the above analysis, that part of the clarification of the CBEC which engrafts a condition that the exemption notification is applicable only where the value of the course material (sold by a commercial or training institute) answers the description of standard text books which are priced, is illegal, unauthorised and of no effect. No notice or cognition can be taken by any authority or such unauthorised exertions by the CBEC. If this illegal and unauthorised condition, imposed on the generality of exemption granted by the Central Government vide Notification No. 12/2003-S.T., dated 20-6-2003 is ignored, as it must, the assessee/appellant is clearly entitled to the benefit of the exemption.

10. The exemption notification is clear and admits no restrictive clauses. Consequently, the assessee is entitled to relief.

11. The appeal must therefore succeed. The order-in-appeal confirming the adjudication order is therefore quashed. There shall however be no order as to the costs".

6. This decision of the Tribunal was followed by subsequent decision in **Cerebral Learning Solutions Pvt. Ltd. versus Commr. of C. Ex & ST, Indore**⁵.

7. In view of the above, we find that the impugned order passed denying the benefit of exemption notification relying upon the CBEC Circular dated 20.06.2003 cannot be sustained as the CBEC has no power to modify the scope of the exemption notification No. 12/2003-ST dated 20.06.2003 issued by the Central Government. Consequently, the appeal is allowed and the impugned order is set aside with consequential benefits, if any, to the appellant.

(Order pronounced in open court on 10/11/2022.)

(P.V. SUBBA RAO)
MEMBER (TECHNICAL)

(DR. RACHNA GUPTA)
MEMBER (JUDICIAL)

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⁵ 2018 (10) G.S.T.L. 37 (Tri. – Del.)