

Thanjai Study Centre and Trichy Vs. Commissioner of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Tamil Nadu

Decided On : Aug-17-2007

Reported in : (2007)8STR572

Judge : K T P.

Appellant : Thanjai Study Centre and Trichy

Respondent : Commissioner of Central Excise

Judgement :

1. These applications have been filed by M/s. Thanjai Study Centre and M/s. Trichy Institute of Management Studies (P) Limited. The applications seek waiver of predeposit and stay of recovery in terms of the impugned orders as follows: The applicants are engaged in coaching of persons who wish to write examinations conducted by Alagappa University on passing which the University awards degrees to them. The persons enrolled with the above institutes undergo coaching in courses such as B.A, B.Com., M.B.A etc as conducted by regular colleges affiliated to the University. These institutes are two of a large number of study centres set up across the country through Memoranda of Understanding they have entered into with the University. The centres conduct personal contact programmes through which the students are prepared to take the examinations conducted by the University. As per the memorandum of understanding the study centres/institutes have entered into with the University, they are responsible to set up infrastructure and provide faculty for conducting coaching. The institutes/centres collect fees from the students which are shared with the

University in different proportions for different courses as per the MOU. Each student pays to the assessee an amount payable directly to the University and another amount payable to the assessee.

2. After issuing notices to the applicants, demands, for service tax on the fees collected by the institute/study centres have been made for different periods as indicated under the head "Commercial Training and Coaching" The main ground for confirming the demands is that the exemption provided under Notification No. 10/2003-ST dated 20.6.03 extended to taxable service provided by Commercial Training or Coaching Centre is not applicable if the charges for such services are paid by the person undergoing such course or curriculum directly to the commercial training or coaching centre. In the instant case, the applicants collected the entire charges for the services directly from the persons undergoing the various courses. The Id. Consultant submits that the appellants are not different from the regular colleges affiliated to the University which conduct regular coaching in the courses for which the students take the examination conducted by the University. In the regular colleges the entire fee is paid by each student directly to the college. As such institutions have been allowed exemption in terms of Notification No. 10/03-ST dated 20.1.2003, the applicants are also entitled to the said exemption. Id. Consultant submits that the Hon'ble High Court of Kerala in Malappuram Distt.

Parallel College Association v. Union of India 2006 (2) STR 321 (Ker) has observed that charging parallel colleges service tax for services rendered and simultaneously providing exemption to regular affiliated colleges for the services was discriminatory and violative of Article 14 of the Constitution of India. The Id. Consultant submits that the applicants are on the same footing as the parallel colleges dealt with by the Hon'ble High Court of Kerala in the above judgment. The appellants provide coaching to students in courses as the regular colleges for taking examination, on passing which the University awards degrees to the students.

4. I have carefully examined the case records and considered the submissions made by both sides. The institutes in question render the same service as regular

colleges affiliated to University or parallel colleges referred to by the Hon'ble High Court of Kerala in the judgment cited. The distinction found by the lower authority to deny the exemption contained in Notification No. 10/2003-ST is apparently not proper as the exemption is extended to regular colleges which collect entire fee directly from the students. In the case of the applicants, though they collect the entire fee from the students, a portion of the same is drawn in instruments directly encashable by the University and the balance by the respective institutes as per the memorandum of understanding. In the facts and circumstances of the case, prima facie, the demands of tax and penalties are not sustainable. Accordingly, there shall be complete waiver of predeposit and stay of recovery of the demand of tax and penalties till the disposal of the appeals filed by the appellants.

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