

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
WEST ZONAL BENCH : AHMEDABAD**

REGIONAL BENCH - COURT NO. 3

SERVICE TAX Appeal No. 272 of 2012-DB

[Arising out of Order-in-Original/Appeal No 29-2011-AHD-III-KANPAZHAKAN-COMMR-A--
AHD dated 07.02.2012 passed by Commissioner of Central Excise-AHMEDABAD-III]

Advance Computer Education

.... **Appellant**

Nr. People Credit Society,
Pir Boardi, KADI, GUJARAT

VERSUS

Commissioner of Central Excise & ST, Ahmedabad

.... **Respondent**

Custom House, 2nd Floor, Opp. Old Gujarat High
Court, Navrangpura, Ahmedabad, Gujarat-380009

WITH

SERVICE TAX Appeal No. 273 of 2012-DB

[Arising out of Order-in-Original/Appeal No 28-2011-AHD-III-KANPAZHAKAN-COMMR-A--
AHD dated 07.02.2012 passed by Commissioner of Central Excise-AHMEDABAD-III]

Advance Computer Education

.... **Appellant**

Nr. People Credit Society,
Pir Boardi, KADI, GUJARAT

VERSUS

Commissioner of Central Excise & ST, Ahmedabad

.... **Respondent**

Custom House, 2nd Floor, Opp. Old Gujarat High
Court, Navrangpura, Ahmedabad, Gujarat-380009

APPEARANCE :

None for the Appellant
Shri Rajesh K Agarwal, Superintendent (AR) for the Revenue.

**CORAM: HON'BLE MR. RAMESH NAIR, MEMBER (JUDICIAL)
HON'BLE MR. RAJU, MEMBER (TECHNICAL)**

DATE OF HEARING : 04.10.2022

DATE OF DECISION : 07.10.2022

FINAL ORDER NO. A/11188-11189 / 2022

RAMESH NAIR :

The issue involved in the present case is that whether the appellant is liable pay service tax under the category of Commercial Training or Coaching Service for the computer training provided by the appellant to the students during the period 21.06.2006 to 30.11.2009. The case of the department is

that the appellant is a Society for Information & Technology Development (SITD) having registered office at Kannur, Kerala for providing Computer Teachers Training course, Computerised Professional Accounting course and Wi-Fi net-working. Since the appellant have provided the service with the brand name of SITD, they are not eligible for small scale exemption available under the Notification No. 6/2005-ST dated 01.03.2005. Accordingly, the demand of Rs. 15,114/- was confirmed invoking extended period. The appellant being aggrieved, filed appeal before Commissioner (Appeals), who rejected the appeal, therefore the appellant is before us.

2. When the matter was called out, none appeared on behalf of the appellant. We have heard Shri Rajesh K Agarwal, learned Superintendent (AR) who reiterated the findings of the impugned order.

3. On careful consideration of the submissions made by learned AR and perusal of the record, we find that he appellant have claimed that they are eligible for small scale exemption under the Notification No. 6/2005-ST as their total value is much below the threshold exemption limit of Rs. 10 Lakh per year. In this regard, we find that there is no dispute that the appellant are franchisee of SITD and the service was also provided to the students by the SITD, therefore the appellant are providing service under the brand name of another person. Therefore, they are not eligible for small scale exemption. The appellant also raised a point that they are eligible for exemption on the vocational training service. In this regard we find that Computer Education service has been excluded from the Vocational Training service by Notification No. 19/2005-ST dated 07.06.2005. In this case the period involved is 21.06.2006 to 30.11.2009 therefore, the appellant is not eligible for exemption under the vocational training.

4. As regards the invocation of extended period, we find that for the period 21.06.2006 to 30.11.2009, the show cause notice was issued on 03.06.2010 wherein the extended period was invoked. We find that the issue is a neat question of law involving interpretation whether the same is falling under Commercial Training or Coaching Service and it is also observed that the appellant had a bonafide belief being a very small service provider having taxable value of Rs. 1,26,200/- that too in four years, they are eligible for small scale exemption under Notification No. 6/2005-ST. Thus, the issue was also involved an interpretation of notification. The appellant have not hidden the transaction which was retrieved from their record. Considering the overall facts, we are of the view that demand for extended period is not sustainable. Consequently, the penalty under section 78 is also not imposable.

5. As a result we hold that appellant is liable to service tax only for the normal period and demand for extended period and entire penalty is set-aside. The appeal is partly allowed in the above terms.

(Pronounced in the open court on 07.10.2022)

(Ramesh Nair)
Member (Judicial)

(Raju)
Member (Technical)