

**CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH AT HYDERABAD**

Division Bench

Court – I

Service Tax Appeal No. 30844 of 2017

(Arising out of Order-in-Original No. GUN-EXCUS-000-COM-037-16-17 dt.27.03.2017
passed by the Commissioner of Central Excise & Service Tax, Guntur)

BRK Educational Society

D.No.4-4-104, 3rd Lane, Chandramouli Nagar,
Guntur District, AP – 522 007

.....Appellant

VERSUS

**Commissioner of Central Excise
& Service Tax, Guntur**

P.B.No.331, CR Building, Kannavarithota,
Guntur, Andhra Pradesh – 522 004

.....Respondent

Appearance

Shri S. Jai Kumar & Shri R. Raghavendra Rao, Advocates for the Appellant.
Shri A.V.L.N. Chary, Authorized Representative for the Respondent.

Coram:

HON'BLE MR. ANIL CHOUDHARY, MEMBER (JUDICIAL)

HON'BLE MR. A.K. JYOTISHI, MEMBER (TECHNICAL)

FINAL ORDER No. A/30256/2024

Date of Hearing: 22.11.2023

Date of Decision: 08.04.2024

[Order per: ANIL CHOUDHARY]

The issue in this appeal is whether the appellant - a Society, is liable to pay service tax on their activity of imparting education as per the Intermediate curriculum, with intensive preparation for competitive exams.

2. The Appellant is a society registered under Andhra Pradesh Societies Registration Act, 2001 with the objective of promoting education, sports, literary and cultural activities in the state of Andhra Pradesh. The Appellant society had obtained necessary permissions from the Board of Intermediate education Andhra Pradesh for setting up of junior inter colleges for providing intermediate education. The Appellant has been simultaneously preparing the intermediate students for competitive examinations like IITJEE, EAMCET etc.

3. The present proceedings have been initiated by the department on the ground that the activity of coaching provided by the Appellant Society to its intermediate students for entrance examinations like IITJEE, EAMCET is appropriately classifiable under 'commercial training or coaching service' for the period up to 30th June 2012, which is a taxable service under clause (zzc) of sub-section (105) of Section 65 of the Finance Act, 1994. For the period from 1/7/2012, according to the department, the activities are taxable service as defined under section 65B (44) of the Finance Act 1994. The period involved in this appeal is 2011-12 to 2014-15 and the demand confirmed is Rs.4,86,07,157/- along with interest and penalties.

4. The Ld counsel for appellant inter alia submitted that:

4.1 The students are admitted for two year intermediate course and they are also provided with coaching for entrance examinations like EAMCET, IIT etc. The society is imparting exclusive coaching for EAMCET/IIT (for already inter passed students) to some other students on which they are paying service tax and there is no dispute on this. In respect of students admitted in Intermediate colleges, the appellant claimed exemption under Notification No. 33/2011-ST dated 25/04/2011, as the coaching provided by the Appellant is leading to grant of Intermediate certificate recognized by law. This notification was in force up to 30/06/2012. For the period from 01/07/2012 onwards, the appellant claimed exclusion under negative list entry in Sec 66D(I) (in force up to 14/05/2016) and also under Sl.No.9 of the Mega Exemption Notification No. 25/2012 ST dated 20/06/2012. On identical set of facts, in respect of the orders-in-original passed by the Commissioner of the same jurisdiction of Guntur, the CESTAT in case of **M/s Sri Chaitanya Educational Committee vs CCE, Guntur 2019 (22) G.S.T.L. 67 (Tri. - Hyd.)**, was pleased to set aside the demands for the period from 2011-12 to 2014-15 and held that the activities of the Appellant fall within the scope of Notification No.33/2011 and Negative list entry, Sl.No.9 of the Mega exemption Notification. The ratio of the above decision has also been followed by the CESTAT in SHIV CHHATRAPATI SHIKSHAN SANSTHA VERSUS COMMISSIONER OF CGST & CENTRAL EXCISE, AURANGABAD - **2023 (11) TMI 419 - CESTAT MUMBAI** in its order dated 09/11/2023. Accordingly, learned Counsel submitted that the demand is not sustainable.

5. Ld DR for Revenue while supporting the finding of the Adjudicating Authority submitted that:

5.1 The appellant is operating number of colleges located in different places for imparting coaching to students at intermediate level (MPC/BiPC) along with coaching for state level and national level competitive exams viz., EAMCET/IIT/AIIMS/AIEEE/BITSAT. It is observed that these campuses of appellant are nothing but tuition/coaching centres for competitive exams for students at state level and national level for admission after their completion of intermediate education. It is also observed that the appellant are giving intensive coaching to students by arranging extra study hours, conducting weekly exams, providing extra facilities and care, supplying exhaustive course material and charging huge amounts for such coaching over and above fees to be charged for Intermediate Education as prescribed by Board of Intermediate Education (BIE), AP etc. It is evident that the "Regular Intermediate" Course can alone lead to granting of certificate recognised by law. The other courses viz., Intermediate + IIT-JEE (along with AIEEE + BITSAT), Intermediate + EAMCET + AIEEE + BITSAT are basically designed for coaching to IIT, JEE, Birla Institute (BITSAT), NIT (AIEEE) and these are not leading to grant of any certificate recognised by law. Hence, the demand is sustainable.

5.2 Further urges the CESTAT Final Order No.A/30361-30365/2018, dt.24.01.2018, in ST/21253/2014, ST/22159/2015, ST/30229/2017, ST/31075/2017 & ST/22142/2015 is not accepted by the Department and is appealed against before the Hon'ble Supreme Court of India being Civil Appeal Diary No.46812/2018 and the same was tagged with Case No.17162/2016 filed by M/s Dewsoft Overseas Pvt. Ltd. Vs. CCE, New Delhi, and the issue has not attained finality.

6. We have considered the rival submissions made by both sides and perused the records. Admittedly, the facts of the case are similar to the case of **M/s Sri Chaitanya Educational Committee vs CCE, Guntur 2019 (22) G.S.T.L. 67 (Tri. - Hyd.)**, wherein for the period 2011-12 to 2014-15, it was held that the demand is not sustainable as post 2011, there is change in legal provisions and the only requirement is that the coaching or training should lead to grant of a certificate, but it is not necessary that the institute itself shall award such certificate. For the period post 30.06.12-negative list also, the Tribunal extended the benefit of negative list entry under Sec 66D and set aside the demand.

The said decision of the Tribunal has also been followed by coordinate bench in SHIV CHHATRAPATI SHIKSHAN SANSTHA VERSUS COMMISSIONER OF CGST & CENTRAL EXCISE, AURANGABAD - 2023 (11) TMI 419 - CESTAT MUMBAI.

7. Hence, we find that the issue is squarely covered in favour of the Appellant in the precedent orders of the Tribunal and we see no reason to take a different view in this matter. Accordingly, the appeal is allowed and the impugned order is set aside.

8. Appeal allowed.

(Pronounced in the Open Court on 08.04.2024)

(ANIL CHOUDHARY)
MEMBER (JUDICIAL)

(A.K. JYOTISHI)
MEMBER (TECHNICAL)