(2014) 01 BOM CK 0016

In the Bombay High Court

Case No : Central Excise Appeal (L) No. 354 of 2013

National Insurance Academy APPELLANT

Vs

Commr. of Service Tax RESPONDENT

Date of Decision : 07-01-2014

Acts Referred:

Central Excises and Salt Act, 1944 — Section 35G
Finance Act, 1994 — Section 83

Citation : (2014) 44 GST 379 : (2014) 33 STR 225

Hon'ble Judges : Mohit S. Shah, C.J;M.S. Sanklecha, J

Bench : Division Bench

Advocate : Yogesh Patki assisted with Abhishek Singh instructed by Mulla and Mulla and C.B. and C, for the Appellant; Pradeep S. Jetly a/w. J.B. Mishra, for the Respondent

Judgement

1. At the instance of the Counsel for the parties, the appeal is being disposed of at the stage of admission. This appeal u/s 83 of the Finance Act, 1994 read with Section 35G of the Central Excise Act, 1944 challenges the order dated 21 October, 2013 of the Customs, Excise and Service Tax Appellate Tribunal (the Tribunal) [2014 (33) S.T.R. 245 (Tribunal)]. By the impugned order dated 21 October, 2013, the appellant was directed to make pre-deposit of 50% of the confirmed Service Tax demand of Rs. 5,34,65,194/- (without interest and penalty) for the purpose of entertaining its appeal on merits from the order in original dated 25 February, 2013 of the Commissioner of Service Tax.

2. Although the appellant has raised several questions of law, the basic dispute relates to the liability of the appellant to pay Service Tax under the head ''Commercial Training or Coaching'' of the Finance Act, 1994 (the said Act) in respect of an MBA course conducted by it. The contention of the appellant is that the show cause notice dated 2(j) April, 2012 raising a demand of Rs. 5,34,65,194/- for the period October, 2006 to March, 2012 is substantially time-barred and that financial hardship in making pie pre-deposit would make the impugned order dated 21 October, 2013 unsustainable.

3. The appellant is a society registered under the Societies Act, 1860 and also registered under the Bombay Public Trusts Act, 1950. The appellant has been formed by Government of India, Life Insurance Corporation, General Insurance Corporation and its four subsidiaries. The appellant''s objective is of rendering education in the field of insurance without profit motive. The appellant is exempted from payment of Income Tax under the Income Tax Act, 1961, since the income generated by its activities is considered to be charitable in nature.

4. The main part of the demand i.e. to the extent of Rs. 4.80 Crores is with regard to the appellant''s, activities of rendering Commercial Training and Coaching services. The appellant commenced providing a MBA (Master of Business Administration) course on the basis of approval from All India Council for Technical Education (AICTE). However this approval of the AICTE required the appellant to obtain affiliation to University for its Management Course. The appellant had obtained affiliation of Pune University for its Ph.D. Course and they believed it is sufficient compliance with the AICTE requirement. In any case, the appellant was of the view that their services of Commercial Training or Coaching is not chargeable to Service Tax under the said Act, as it was charitable. The aforesaid view of the appellant was on the basis of an opinion of a consultant one JAC Consultant dated 9 June, 2005.

5. A show cause notice was issued to the appellant on 20 April, 2012 inter alia seeking to recover Service Tax amounting to Rs. 5.34 Crores in the aggregate attributable to Commercial Training or Coaching Service, Management Consultancy Service, Business Auxiliary Service, Convention Service, Renting of immovable property. Out of the aforesaid demand of Rs. 5.34 Crores, an amount of Rs. 4,80,63,080/- was attributable to Commercial Training or Coaching service. The show cause notice covered the period October, 2006 to March, 2012. The appellant responded to the show cause notice and, inter alia, pointed out that prior to the amendment to the said Act, 1994 by the Finance Act, 2010, which was made retrospective w.e.f. 1 July, 2003, there were various decisions of the Tribunal in holding that institutions like the appellant which were not for profit are not liable to service tax under the head "Commercial Training or Coaching". Therefore, the demand beyond the normal period is not sustainable. On merits, the appellant contended that they are not liable to pay Service Tax. This was on the ground that they had affiliation with Pune University for Ph.D. Course. The Commissioner of Service Tax by her order dated 25 February, 2013 did not accept the appellant''s submissions and confirmed the Service Tax demand of Rs. 5.34 Crores along with equivalent penalty and also charged interest.

6. Being aggrieved, the appellant filed an appeal to the Tribunal and also an application, for dispensing with the requirement of pre-deposit of the Service Tax amount of Rs. 5.34 Crores, equivalent penalty and interest for the purposes of its appeal being entertained on merits. The appellant besides pleading prima facie merits and the demand being time-barred also pleaded financial hardship in

support of its plea for complete waiver of the pre-deposit to entertain its appeal on merits. The Tribunal by the impugned order was of the prima facie view that the appellant had not made out a case for total waiver of pre-deposit of Service Tax. The impugned order directs the appellant to pay an amount equal to 50% of the confirmed demand within a period of eight weeks from the date of the impugned order dated 21 October, 2013,

7. Being aggrieved by the impugned order dated 21 October, 2013 of pre-deposit, the appellant submits that the in facts of the present case, a deposit of 50% of the Service Tax demand for the purpose of entertaining its appeal on merits is harsh, taking in view the facts that the appellant had a bona fide belief that being an institution rendering for charitable purposes, would not be liable for the payment of Service Tax. This view of the appellant was not only on the basis of an opinion of Consultants dated 9 June, 2005 but also supported by various decisions of the Tribunal such as (2008) 12 STJ 377 , (2009) 18 STJ 384 and Commissioner of Sales Tax v. Institute of Insurance and Risk Management - 2010 (20) S.T.R. 836. Attention was drawn to Tribunal''s order in 2012 (278) ELT 215 wherein it has been held that when there is a bona fide belief on the part of the assessee in not paying Service Tax due the decision of the Tribunal, extended period of limitation is not sustainable. Besides, the appellant pointed out that their cash and bank balance as on 31 March, 2013 is only Rs. 27.85 lakhs. In the above circumstances, the deposit of 50% of the confirmed duty amount comes to Rs. 2,67,37,597/- is unreasonable and complete waiver of duty, penalty and interest was warranted.

8. On the other hand, Mr. Pradeep Jetly, learned Counsel appearing for the respondent-revenue submitted that the questions on merits of the controversy including the question of applying the extended period of limitation would be examined by the Tribunal at the final hearing of the appeal. As regards financial hardship/condition, it is submitted that schedule 12 to the balance sheet for the year ending 31 March, 2013 contains not only the figures of cash and bank balances but also receivables from programme fees of Rs. 2.07 Crores besides other receivables. In the circumstances, there is no financial hardship and the impugned order dated 21 October, 2013 of the Tribunal directing pre-deposit of 50% of Rs. 5,34,65,194/- calls for no interference.

9. Having heard the learned Counsel for the parties, we find that the Tribunal has taken a prima facie view that the appellant has been rendering taxable services by imparting training in MBA Course. We are not inclined to express any view on the merits of the controversy between the parties. The merits of the controversy would be examined in detail at the final hearing of the appellant''s appeal. However, keeping in view the fact that the Tribunal- itself had in Great Lakes Institute (Supra), Indian School of Business (supra) and in other cases has taken a view for the period prior to amendment in 2010 that institutions such ate the appellant are not liable to pay Service Tax in respect of Commercial Training or Coaching as also the opinion of a consultant, the appellant were justified in

having a belief that no Service Tax is payable on the above service. Therefore, taking in view the fact that the appellant is set up by the Government of India and a genuine understanding/belief that no Service Tax is payable by them on the basis of the decisions rendered by the Tribunal prior to the retrospective amendment to Commercial Training or Coaching Services would prima facie establish that the demand is substantially time-barred. In view of the above, we are of the view that interests of justice would be served if the amount of pre-deposit on Commercial Training or Coaching Service is reduced from 50% to 25%, but this reduction will apply in respect of service tax payable for commercial training or coaching quantified at Rs. 4,80,63,080/- for the period between October, 2006 to March, 2012. So far as the other services are concerned, no submissions were made by the appellant before us or even before the Tribunal for dispensing with pre-deposit of demand. Therefore, the appellant shall deposit the entire amount of Rs. 54.01 lakhs attributable to the other services.

10. Hence, appeal is partly allowed: (i) By modifying the amount of pre-deposit from 50% to 25% of the confirmed demand attributable to Commercial Training or Coaching Services and depositing the entire amount of Rs. 54.01 lakhs attributable to the other services.

(ii) The amount shall be deposited within eight weeks from today and upon deposit of such amount, there shall be waiver on condition for deposit of the balance amount of Service Tax, interest and penalty.

(iii) There shall be interim stay against coercive recovery against the balance amount till the disposal of the appeal by the Tribunal.

Appeal is disposed of in the above terms with no order as to costs.

