

**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
WEST ZONAL BENCH AT MUMBAI
COURT NO.**

Appeal No. ST/89955 & 89956/14

(Arising out of Order-in-Appeal No. NGP/EXCUS/000/APP/084-085/14-15 dt. 25.8.2014 passed by the Commissioner of Customs & Central Excise (Appeals), Nagpur)

True Education Institute Pvt. Ltd. : Appellant

VS

Commissioner of Service Tax, Nagpur : Respondent

Appearance

Shri Rajiv Luthia C.A., for Appellant

Shri M.Suresh, Dy. Commr. (A.R) for respondent

CORAM:

Hon'ble Shri Ramesh Nair, Member (Judicial)

Hon'ble Shri Raju, Member (Technical)

Date of hearing : 12/12/2017

Date of pronouncement : 21 /03/2018

ORDER NOA/85709-85710/2018

Per : Ramesh Nair

The Appellant is engaged in rendering 'Commercial Training or Coaching Services'. They sell prospectus of their institute detailing about the institute, faculties and various courses offered by them. Service tax Demands for the period 01.04.2006 to 31.12.2010 were raised on account of inclusion of sales value of prospectus in assessable value of services by issuance of show cause notice dt. 06.09.2011 based on audit observation. Penalties were also proposed u/s 76,77 and 78 of the FA, 1994. The demands were confirmed by

the adjudicating authority. The Appellant filed appeal before Commissioner (Appeals) against the adjudication order which came to be rejected vide OIA dt. 25.08.2014. Hence the present appeal.

2. Heard Ld. Shri Rajiv Luthia, CA for the Appellants who submitted that Demand of Service Tax is not sustainable as the sale of prospectus is not covered by the services. That the activity of sale of prospectus is covered under the Maharashtra Value Added Tax Act, 2002 under Entry C – 76. He also submits that the demands are time barred.

3. Shri M. Suresh, DC (AR) for the revenue supports the impugned order and reiterates the findings of the lower authorities. He also relies upon tribunal judgment in case of Vigyan Gurukul 2009 (14) STR 492 (TRI) and Neminath Fabrics Pvt. Ltd. 2010 (256) ELT 369 (SC) to support the impugned order.

4. After appreciating the submissions made by both the sides we find that the sale of prospectus is not a part of the Commercial Training or Coaching Services' as held in the precedent judgment of this Tribunal in case of Balaji Society 2014 (10) TMI 64 CESTAT – MUMBAI. Further we find that the prospectus is only for the purpose of screening of students by way of Admission Screening Examination and is not a part of the services. The student only by filling of prospectus does not become entitled to get coaching from the Appellant. Hence the same cannot be considered as part of Commercial Training or Coaching Services'. Further we also find that

no evidence has been shown to substantiate the charges for invoking demand of extended period or imposition of penalty. Since we are of the view that the sale of prospectus is not part of services rendered by the Appellant, we set aside the demand and penalty. Accordingly the impugned order is set aside and appeals are allowed with consequential reliefs, if any.

(Pronounced in court on 21/03/2018)

(Raju)
Member (Technical)

(Ramesh Nair)
Member (Judicial)

SM.