

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
ALLAHABAD**

REGIONAL BENCH – COURT NO.I

Service Tax Appeal No.70588 of 2019

(Arising out of Order-in-Appeal No.61-62/ST/Alld/2019 dated 30/03/2019 passed by Commissioner (Appeals), CGST & Central Excise, Allahabad)

M/s Major Kalshi Classes Pvt. Ltd.Appellant

(House No.76, Balrampur Housing Scheme,
Mumfordganj, Allahabad, U.P. 211002)

VERSUS

Commissioner, Central Excise, AllahabadRespondent

(C.C.E., Allahabad)

AND

Service Tax Appeal No.70615 of 2019

(Arising out of Order-in-Appeal No.61-62/ST/Alld/2019 dated 30/03/2019 passed by Commissioner (Appeals), CGST & Central Excise, Allahabad)

**Shri Saurabh Singh, Director of M/s Major Kalshi Classes
Pvt. Ltd.Appellant**

(105/224, Shapath Building, Tagore Town,
Allahabad-211002)

VERSUS

Commissioner, Central Excise, AllahabadRespondent

(C.C.E., Allahabad)

APPEARANCE:

Shri Nishant Mishra, Advocate for Appellant
Shri B.K. Jain, Authorized Representative for Respondent

CORAM :

**Hon'ble Mrs. ARCHANA WADHWA, MEMBER (JUDICIAL)
Hon'ble Mr. ANIL G. SHAKKARWAR, MEMBER (TECHNICAL)**

FINAL ORDER NO.70147-70148 / 2020

DATE OF HEARING: 10 January, 2020
DATE OF PRONOUNCEMENT: 05 February, 2020

PER: ANIL G. SHAKKARWAR

Above stated two appeals are taken together for decision since they are arising out of common impugned Order-In-Appeal No.61-62/ST/Alld./2019 dated 30 March, 2019. One appeal is filed by the service provider and another appeal is filed by the Director of the service provider.

2. Brief facts of the case are that appellants were engaged in providing 'Commercial Training or Coaching Service'. They were providing coaching services for recruitment to National Defence Academy, Combined Defence Service and Service Selection Board etc. The appellants in addition to providing coaching were also selling text books published by M/s MKC publication. For the facility of some of the service recipients, the appellants were also providing hostel facility. On 01 February, 2017 business premises of the appellant was searched by the officers of Revenue and they have also recorded statements of Shri Saurabh Singh, Director the other appellant. Between 01 February, 2017 and 03 October, 2017 appellant deposited service tax amounting to Rs.72,68,569/- for the period from 01 April, 2012 to 31 March, 2017 along with interest of Rs.27,98,931/- and penalty at the rate of 15% to the tune of Rs.10,90,285/- in terms of Second proviso to Sub-section (1) of Section 78 of the Finance Act, 1994. During the period from 2012-13 to 2015-16, as per balance sheet and P & L Accounts appellant collected towards tuition fee Rs.4,04,34,904/-. In addition appellant received Rs.3,25,64,500/- towards sale of books and forms. During the same period hostel charges recovered by the appellant were Rs.2,62,51,328/-. On 20 November, 2017 appellants were issued with a show cause notice with a proposal to consider all the receipts by appellant towards tuition fee, sale of books & forms and hostel charges in terms of Section 66F of Finance Act, 1994 as bundled service for the period from 2012-13 to 2016-17 with computation of total consideration by appellant to be around Rs.10 crores and with demand of service tax of Rs.1,30,52,226/- with proposal for penalties and proposal for personal penalty on Shri Saurabh

Singh, Director and the other appellant. The appellant submitted to the Original Authority that for the period of show cause notice, the service tax payable on account of collection of tuition fee for providing commercial training and coaching service workout to Rs.45,70,670/- and the same was covered by around Rs.72 lakhs paid by the appellant before issue of show cause notice and the same was paid along with interest and 15% penalty. The appellant further submitted that sale of books was not covered by service and that provision of hostel facility was not naturally bundled with provision of commercial training or coaching service. On 26 October, 2018 Order-in-Original was passed where demand of service tax of Rs.1,30,52,226/- was confirmed and various penalties were imposed and Shri Saurabh Singh was imposed with penalty of Rs.1 lakh. The said demand included demand on legal charges and provisions of taxies. Aggrieved by the said order, appellant preferred appeal before Commissioner (Appeals). The learned Commissioner (Appeals) has decided the said appeal through impugned Order-in-Appeal dated 30 March, 2019. The submissions of appellant before Commissioner Appeals are summarized in Para 2.4 of the impugned order. The same is reproduced below:-

"2.4 Aggrieved with the impugned Order, the appellant has filed the present appeal, mainly on the grounds that (i) Show Cause Notice dated 20.11.2017 was not required to be issued to the extent of demand of Service Tax of Rs.45,70,670/-, as they had deposited Rs.45,70,670/- alongwith interest of Rs.27,98,931/- and 15% penalty of Rs.10,90,285/- on the tuition fee, before issuance of the Show Cause Notice; (ii) hostel service cannot be bundled with coaching service in terms of 66F of the Act and no Service Tax was leviable on hostel rent received from the students; (iii) sale of books was sale of goods & as such, distinguishable from service and thus, no Service Tax was leviable on sale/trading of goods; (iv) they were not liable to pay Service tax on legal service, as the payments were made to the consultants and not to the advocates; (v) demand of Service Tax of Rs.2,93,738/- on amount of Rs.23,76,520/- during 2013-14 on account of alleged difference in books of accounts, is not sustainable, (vi) they were not liable to pay Service tax for availing taxi service, as the taxis were non air-conditioned, and thus, exempted under clause 23(b) of Notification No.25/2012 dated 20.06.2012. (vii) they were

eligible for cum-tax value benefit, (viii) extended period of limitation was not invocable and (ix) imposition of penalties under Sections 77(1)(a), 77(1)(e), 77(2) & 78 of the Act, was unjustified."

3. The learned Commissioner (Appeals) through the impugned has held that around Rs.45 lakhs deposited by appellant could not be considered under proviso to Sub-section (1) of Section 73 since appellants had not deposited entire demand of service tax of around Rs. 1.30 crore. Therefore, he rejected the contention of the appellant that there was no need to issue show cause notice in respect of service tax on tuition fee collected towards providing commercial training or coaching service. The learned Commissioner (Appeals) has reproduced Para 9.2.4 of the "Taxation of Services: An Education Guide" issued by Central Board of Excise & Customs. The same is reproduced below:-

"9.2.4 Manner of determining if the services are bundled in the ordinary course of business

Whether services are bundled in the ordinary course of business would depend upon the normal or frequent practices followed in the area of business to which services relate. Such normal and frequent practices adopted in a business can be ascertained from several indicators some of which are listed below:-

- *The perception of the consumer or the service receiver, if large number of service receivers of such bundle of services reasonably expect such services to be provided as a package then such a package could be treated as naturally bundled in the ordinary course of business.*
- *Majority of service providers in a particular area of business provide similar bundle of services. For example, bundle of catering on board and transport by air is a bundle offered by a majority of airlines.*
- *The nature of the various services in a bundle of services will also help in determining whether the services are bundled in the ordinary course of business. If the nature of services is such that one of the services is the main service and the other services combined with such service are in the nature of incidental or ancillary services which help in better enjoyment of a main service. For example service of stay in a hotel is often combined with a service or laundering of 3-4 items of clothing free of cost per day. Such service is an ancillary service to the provision of hotel accommodation*

and the resultant package would be treated as services naturally bundled in the ordinary course of business.

- *Other illustrative indicators, not determinative but indicative of bundling of services in ordinary course of business are:-*
 - *There is a single price of the customer pays the same amount, no matter how much of the package they actually receive or use. The elements are normally advertised as a package.*
 - *The different elements are not available separately.*
 - *The different elements are integral to one overall supply – if one or more is removed, the nature of the supply would be affected.*
- *No straight jacket formula can be laid down to determine whether a service is naturally bundled in the ordinary course of business. Each case has to be individually examined in the backdrop of several factors some of which are outlined above.”*

On examination of the same he has rejected the contention of the appellants that the sale of books and hostel charges cannot be bundled with provision of commercial training or coaching service. He further held that sales value of books was value of study material and held that it needs to be added to the consideration. He has allowed cum duty benefit to the appellant and reduced the confirmation of demand to Rs.1,15,30,093/-. He further reduced penalty under Section 78 but did not interfere with the penalty imposed on the other appellant. Aggrieved by the said order both the appellants are before this Tribunal.

4. The learned counsel for the appellant Shri Nishant Mishra has submitted that the books and forms sold by the appellant were sale of goods and that the books were published by M/s MKC Publication and they were also available to anybody for purchase and it was not compulsory that they would be available to only those service recipients who were receiving commercial training or coaching service. He has submitted that the said books were available to be sold to anybody on Flipkart. He has further submitted that the appellants issued independent invoices towards sale of books and the sale of books and forms was maintained separately in the books of account. He has relied on this Tribunal's decision in the case of Rubic's Rostrum Coaching Pvt. Ltd. V/s C.C.E. & CUS., Lucknow reported as

2018 (10) G.S.T.L. 258 (Tri.-All.). He submitted that it was held in the said case that no service tax was payable on sale of books. He further submitted that hostel facility was independent activity and that it was not mandatory for every service recipient of commercial training or coaching service to avail hostel facility. He has submitted that they had submitted a list of students who did not availed hostel facility but availed the facility of training or coaching service. Further, he has submitted that they submitted a list of students who availed only hostel facility but did not received coaching service and therefore, it is clear that commercial training and coaching and availability of hostel are independent of each other and the receipt of the same are maintained separately in the books of account. Learned counsel for the appellant has submitted that appellant charged Rs.15,000/- for a period of six month to the students who prefer to stay in the hostel. He submitted, for the period prior to 01/07/2012 the hostel service was covered by 'renting of immovable property' and service tax was not payable on renting of immovable property if the same was used solely for residential purpose such as hotel and hostel. Further Notification No.31/2011 dated 25 April, 2011 exempted short term accommodation where tariff rate of room was less than Rs.1,000/- per day and that the appellant had charged less than Rs.100/- per day and therefore, service tax was not payable. He further submitted that for the period after 01 July, 2012 as per Serial No. 18 of Notification No.25/2012-ST dated 20 June, 2012, if a place is rented out for residential purpose and the tariff is below Rs.1,000/- per day then the same was exempted. He further submitted that hostel was provided for less than Rs.100/- per day and therefore, the same was admissible for said exemption. He further submitted that appellant was not liable to pay service tax of Rs.2,93,738/- since the documents based on which the said demand was raised does not pertain to appellant. He has further submitted that the appellant was not liable to pay service tax of Rs. 45,761/- on expenses towards taxis since the taxis were non air-conditioned. In so far as

bundling of the service are concerned, learned advocate for the appellant has submitted that there are such provisions in said Section 66F of Finance Act, 1994 indicating that only such service can be bundled wherein an element of provisions of one service is combined with an element of provision of any other service. He has submitted that commercial training or coaching services was independent of provision of hostel facility. Further every service recipient of commercial training or coaching was not required to avail hostel facility. There were many students who were availing hostel facility but were not receiving service of commercial training or coaching and therefore, they cannot be bundled. He further submitted that due to the reasons stated for the service provider the penalty on the other appellant is not sustainable.

5. Learned A.R. has submitted that all the services were provided together and therefore they are bundled service. Further, he has submitted that on the sale of books appellant was earning 800% profit. The sale of books should be treated as part and parcel of commercial training or coaching service.

6. We have carefully gone through the record of the case and submissions made before us. The issues to be decided are as below:-

- (i) Whether sale of books is service.
- (ii) Whether provisions of hostel facility and sale of books are to be combined with provisions of commercial training or coaching service as bundled service.
- (iii) Whether service tax was exempted on hostel facility.

We take issue one by one.

(a). We note that it was not compulsory that books cannot be sold to any other person than the one who was receiving the commercial training or coaching service. We note that the books were published by M/s MKC Publication and were available on flipkart for purchase by anybody. We also note that separate invoice were issued for sale of books and cash receipts out of

sale on books were separately maintained in the book of account. We do not appreciate the contention of the Revenue that the books are rendering 800% profit and therefore, the profits should be clubbed with provision of commercial training or coaching service because Revenue did not provided any information as to how they have come to a conclusion that there was 800% profit. Further the value of the books cannot be ascertained on the basis of the cost of paper used and cost of printing. Further, we note that separate invoice were issued for book and anybody could have purchased the books. Therefore, by relying on decision of this Tribunal in the case of Rubic's Rostrum Coaching Pvt. Ltd. (Supra), we hold that sale of books was not taxable activity and therefore, there was no service tax leviable on the sales value of books.

(b). The learned Commissioner (Appeal) has reproduced Para 9.2.4. of "Taxation of Services: An Education Guide" and the same is reproduced in the precedent paragraph. On careful reading of the said vision of Central Board of Excise & Customs it is clear that it was clarified by CBEC that if large number of service receivers of such bundle of services reasonably expect such services to be provided as a package then such a package would be treated as naturally bundled. Revenue has not brought any evidence on record that large number of service receivers reasonable expect every provider of commercial training or coaching service to provide hostel facility. The Central Board of Excise & Customs has also included that if the majority of service provider in a particular area of business provide similar bundle of services then they should be bundled. Revenue has not brought forward any evidence that majority of service providers in the field of commercial coaching or training service provided hostel facility. In terms of the criteria stated in the manner of determining if the services are bundled as clarified by Central Board of Excise & Customs it is not possible to bundle service of provisions of hostel facility with commercial training or coaching in the present case. We, therefore, hold that the provisions of commercial training or coaching service and provisions of hostel

cannot be bundled under the provisions of Section 66F of the Finance Act, 1994.

(c) The hostel facility is provided for less than Rs.100/- per day and therefore, it is entitled for exemption under Notification No.31/2011 dated 25 April, 2011 and Serial No.18 of Notification No.25/2012-ST. Therefore, we set aside confirmation of service tax on hostel charges.

Further there is no evidence forthcoming in respect of eligibility of confirmation of service tax of Rs.45,761/- therefore, we set aside the same. Since demands are set aside the confirmation of interest on the same & imposition of all the penalties are set aside.

7. Since the demand on service provider do not sustain, the penalty on the other appellant does not sustain. We set aside penalties imposed on Shri Saurabh Singh, the appellant.

8. To sum up except for the service tax, interest and penalty paid by the appellant before issue of show cause notice, we set aside the impugned order and allow both the appeals.

(Order Pronounced in the open Court on 05 February, 2020)

Sd/-
(Archana Wadhwa)
Member (Judicial)

Sd/-
(Anil G. Shakkwar)
Member (Technical)