

**Customs, Excise & Service Tax Appellate Tribunal
West Zonal Bench at Ahmedabad**

REGIONAL BENCH- COURT NO. 3

Service Tax Appeal No. 10477 of 2014-DB

(Arising out of OIA-SUR-EXCUS-001-APP-517/13-14 dated 15/11/2013 passed
Commissioner of Central Excise, Customs and Service Tax-SURAT-I)

C.C.E. & S.T.-Surat-i

.....Appellant

New Building...Opp. Gandhi Baug,
Chowk Bazar, Surat, Gujarat - 395001

VERSUS

National Edu Venture Institute

.....Respondent

Shop No. L/9 To 11, City Light Complex,
City Light Road,
Umara, Surat, Gujarat

APPEARANCE:

Shri Ajay Kumar Samota, Superintendent (AR) for the Appellant
None appeared for the Respondent

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

Final Order No. A/ 11721/2023

DATE OF HEARING: 28.04.2023
DATE OF DECISION: 18.08.2023

RAMESH NAIR

The brief facts of the case are that the Respondent vide their letter dated 16.01.2013 sought a clarification from the Commissioner of service tax Surat -1 that whether their activity of arranging and conducting out station camps/ programs for school children etc. and organizing and conducting tracking camp, adventure camp, wildlife safari, nature camp etc. and arrangement for food, transportation accommodation etc. for the above programs are liable to service tax whether taxable or exempted under clause (f) of Para 2 read with item 9 of exemption notification 25/2012- ST dated 20.06.2012. With reference to the said letter dated 16.01.2013 the Additional Commissioner of Central Excise, Customs and Service Tax Surat- I vide letter dated 01.05.2013 replied that exemption notification exempts only service provided to or by an educational institute in respect of education by way of auxiliary educational services or renting of immovable property. The Learned Additional Commissioner further contended that the services provided by the appellant cannot be considered as services to be

provided to the educational institution in respect of education as the activity of the appellant are an optional additional services being provided by such institutions to their students. Therefore, the services being provided/ agreed to be provided by the appellant are taxable and within the purview of the service tax. Being aggrieved by the said clarification given by the learned Additional commissioner the appellant filed the appeal before the Commissioner (Appeals) who vide order dated 15.11.2013 which is impugned here in, allowed the appeal and set aside the impugned letter dated 01.05.2013 issued by the Additional Commissioner of Central Excise Customs And Service Tax Surat- I therefore, the Revenue has filed the Present appeal.

2. Shri Ajay Kumar Samota, Learned Superintendent (AR) appearing on behalf of the Revenue reiterates the grounds of appeal. He submits that the appeal against the letter issued by the additional commissioner is not maintainable as the said order is not an appealable order as per section 85 of Finance Act but it is only an administrative/ communicative letter clarifying the applicability of the notification. He, on merit, further submits that as per the board Circular No. 172/7/2013 dated 19.09.2013 it was clarified about the levy of service tax on certain services relating to the education.

2.1 He submits that as per the aforesaid board clarification the services defined in exemption notification, such services provided to an educational institute is exempted from service tax. In addition to services mentioned in the definition of auxiliary education services on verification it was revealed that the services provided or to be provided by M/S National Edu Venture Institute were not covered under both criteria of exemption of service tax. Therefore, the view of the additional commissioner is correct. Hence the commissioner (Appeals) erred allowing the appeal filed by the Respondent.

3. None appeared on behalf of the Respondent despite the notice therefore the appeal is taken up for the disposal.

4. We have carefully considered the submission made by Learned AR and perused the records. From the facts we observed that the services under question namely arranging and conducting out station camps/ programs tracking camp, adventure camp, wildlife safari, nature camp etc are provided by the Respondent to the school students only which are nothing but outdoor educational activities. Needless to say, that outdoor games and activities are very much part of education curriculum of education, specialization and expertise for all round development of children which is required for their survival and growth in the present era of education. In the present era all the educational institution do not have in house facility to provide extra curriculum of education therefore such institution outsource the same to the person having expertise in the field to get the best possible result on the low possible cost. Therefore, just because of outsourcing such activities cant cease to be educational activity therefore in our considered view all the activities carried out by the respondent is only related to educational activities and not for any activity other than education. Therefore, we are of the considered view that the impugned order passed by the learned Commissioner extending the benefit of exemption Notification No. 25/2012- ST dated 20.06.2012 is absolutely correct and legal which does not suffer from any infirmity.

4.1 As regard the ground in the appeal that the letter of the additional commissioner is not an appealable order we find that the revenue has not raised any objection before the Commissioner (Appeals) on this issue. Now, it is necessary to analysis provision of appeal accordingly the relevant Section 85 (1) of Finance Act, 1994 is reproduced below:-

"85 (1) Any person aggrieved by any decision or order passed by an adjudicating authority subordinate to the Principal

Commissioner of Central Excise or Commissioner of Central Excise may appeal to the Commissioner of Central Excise (Appeals)."

From the plain reading of the Sub section (1) of Section 85 it is clear that any person aggrieved by any decision or order passed by an adjudicating authority subordinate to the Principal Commissioner of Central Excise or Commissioner of Central Excise may file appeal to Commissioner of Central Excise (Appeals). In the present case the respondent on a very vital issue that whether their activities are taxable or exempted sought clarification from the department, in response the Additional Commissioner vide his letter dated 01.05.2013 given his decision on the taxability of the activities of the respondent. This decision is clearly covered under section 85 (1) in term 'decision' under the said section therefore against the said decision an appeal statutorily lies before the Commissioner (Appeals) therefore we are of the view that the letter dated 01.05.2013 issued by the Additional Commissioner is clearly an appealable order therefore on this count also revenue appeal does not survive.

5. As per our above discussion and finding we are of the considered view that the order passed by the Commissioner (Appeals) is legal and correct which does not require any interference accordingly the same is upheld. Revenue's Appeal is dismissed.

(Pronounced in the open court on 18.08.2023)

**RAMESH NAIR
MEMBER (JUDICIAL)**

**C.L.MAHAR
MEMBER (TECHNICAL)**