IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
EASTERN ZONAL BENCH: KOLKATA

REGIONAL BENCH – COURT NO. 1

Service Tax Appeal No. 75230 of 2016

(Arising out of Order-in-Original No. 13/Commr/ST-I/KOL/2015-16 dated 24.11.2015 passed by the Commissioner of Service Tax-I Kendriya Utpad Shulk Bhawan (3rd Floor), 180, Santipally, Rajdanga Main Road, Kolkata-700107)

M/s. Roy's Institute of Competitive Examination Private Limited, : **Appellant**
Dishari Bhawan, 11/1, B. T. Road
Rathtala, Kolkata-700 056

VERSUS

Principal Commissioner of Service Tax-I, Kolkata : **Respondent**
180, Santipally, Rajdanga Main Road,
Kolkata-700107

APPEARANCE:

Mr. Rajarshi Dasgupta, Chartered Accountant for the Appellant
Shri R. K. Agarwal, Authorized Representative for the Respondent

CORAM:

HON'BLE SHRI ASHOK JINDAL, MEMBER (JUDICIAL)
HON'BLE SHRI K. ANPAZHAKAN, MEMBER (TECHNICAL)

FINAL ORDER NO.76070/ 2025

DATE OF HEARING: 28.04.2025
DATE OF PRONOUNCEMENT: 01.05.2025

ORDER: [PER SHRI K. ANPAZHAKAN]

The present appeal has been filed against the Order-in-Original No. 13/Commr/ST-I/KOL/2015-16 dated 24.11.2015 passed by the Commissioner of Service Tax-I Kendriya Utpad Shulk Bhawan (3rd Floor), 180, Santipally, Rajdanga Main Road, Kolkata, wherein the Ld. Commissioner has confirmed service tax amounting to INR 1,25,29,172/- along with interest and equal amount of tax as penalty. Reversal of CENVAT

credit amounting to INR 1,34,713/- along with interest and equal amount of penalty has been confirmed. Penalty of INR 10,000/- has also been imposed on account of improper registration under section 77(1) of the Finance Act.

2. The demands confirmed in the impugned order and contested by the appellant are summarized in the table below:

Sl. No	**Particulars**	**Amount (incl. cess)+ interest + equivalent penalty**
1	Non-payment of service tax under commercial training and coaching centre services on short-term accommodation service as hostel fees	35,86,321/-
2	Non-payment of service tax under business support services on share of fees received from CMC Limited ('CMC')	25,50,658/-
3	Non-payment of service tax under commercial training and coaching centre services on the following: - Form & Prospectus - 8.58 Lacs - Newspaper - 8.7 Lacs - Magazines - 9.35 Lacs - Library subs. fine, dev. fees - 34.35 Lacs	60,97,878/-
4	Penalty u/s 77(1) of the Finance Act, 1994 for improper registration linked to issue no 2 above	10,000/-

2.1. The demands confirmed in the impugned order but accepted by the appellant are summarized in the table below:

5	Short payment due to accrual accounting	2,10,073/-
6	Miscellaneous	84,249/-
7	Reversal of CENVAT credit	1,34,713/-
8	Demand of interest for short payment of interest at the rate of 13% instead of 18% for certain delays	Interest of 1,14,078/-

3. Regarding the demand of service tax of Rs.35,86,321/- confirmed in the impugned order on account of non-payment of service tax under commercial training and coaching services on hostel fees received for non-residential courses, the appellant submits that during the period in dispute, the Appellant provided two types of courses namely – residential and non-residential. Students opting for "Residential Courses" had to compulsorily stay in the hostel accommodation provided by the Appellant and the course fee includes Hostel Charges. Service tax was charged by the Appellant on the entire amount billed towards Course Fee and Hostel Charges. So far as Non-Residential courses are concerned, the accommodation facility is optional and subject to availability and the course fee does not include such accommodational charges. Sometimes, certain outstation students who otherwise opted for non-residential courses upon request made to the Appellant, were offered such residential

accommodation (depending on availability) and the Appellant charged an amount separately from the students as hostel charges which is nothing but residential short term accommodation facility. Since the facility provided by the Appellant to the students opting for Non-Residential courses are akin to residential accommodation, the Appellant did not charge service tax on the amount billed for the said accommodation facility, which is amply clear from the sample copy of fee structures submitted by them.

3.1. In this regard, the Appellant referred the clarification provided by Board on renting of immoveable property service vide Circular No DOF/334/1/2007-TRU dated 28.02.2007, wherein it has been clarified that the residential accommodation such as hotels, hostels, boarding houses, holiday accommodation, tents, camping facilities have been specifically exempted from service tax. In view of the above clarification, it becomes clear that standalone accommodation service in a hostel for residential purposes would squarely fall under the exclusion clause provided under renting of immoveable property services defined under section 65(90a) of the Finance Act and it is a settled position of law that once a particular service falls within a taxable service, though exempted, the same cannot be classified under any other category of taxable service. In view of the aforesaid, the provision of such short-term residential accommodation service provided to students opting for non-residential courses cannot be classifiable under Commercial Training or Coaching Services under section 65(zzc) of the Finance Act and the demand raised by the Ld. Principal

Commissioner to this extent is baseless and deserves to be set aside.

3.2. In view of the above, the appellant submits that the stand-alone hostel charges collected for non-residential courses, have no connection with Commercial Training and Coaching services Under section 65(105) (zzc) of the Finance Act, in as much as, even if any student, who do not avail this service, would continue to avail the course offered by the Appellant and therefore, the question of payment of service tax does not arise.

3.3. To support this view, the Appellant relied upon the following decisions:

i. **Aditya College of Competitive Exam Vs. C.C.E., Visakhapatnam [2009 (16) S.T.R. 154 (Tri. - Bang.)]**

ii. **I2IT Pvt Ltd Vs. Commissioner Of Central Excise, Mumbai [2014 (34) S.T.R. 214 (Tri. - Mumbai)]**

iii. **Vikas Coaching Centre Vs. Commissioner of Cus., C. Ex. & S.T., Guntur [2011 (22) S.T.R. 650 (Tri. - Bang.)]**

3.4. In view of the above submissions, the question of payment of service tax on the stand-alone accommodation fees recovered from the students does not arise, and the demand raised by the Ld. Principal Commissioner should be dropped and consequential relief should be granted to the Appellant.

4. Regarding non-payment of service tax of Rs.25,50,658/- confirmed in the impugned order under business support services on share of fees

received from CMC Limited ('CMC'), the appellant submits that they have entered into an Education and Training Service Franchise Agreement with CMC whereby CMC and the Appellant will collaborate to provide career development courses directly to the students and no economic benefit is derived between the Appellant and CMC. In terms of the said arrangement, the appellant will be undertaking the courses and teaching the students directly as per the guidelines laid down by the CMC. As per Clause 11(i)(b) of the said arrangement, the entire fees collected from the students together with service tax was handed over by the Appellant to CMC who duly discharged the service tax on the entire amount of the fee and CMC passed on 75% of the revenue (after deducting service tax) to the Appellant as their share of the course fee. In view of the aforesaid facts and circumstances, the appellant submits that for the purposes of levy of service tax there should be a service provider and service Recipient relationship. If the same is not present the basic question of levy of service tax does not arise. In this regard the appellant placed their reliance on the case of ***Commissioner of Service Tax Vs Inox Leisure Ltd. [2022 (61) G.S.T.L. 342 (S.C.)]***, wherein, the Hon'ble Supreme Court rejected the appeal filed by the revenue against the Hon'ble Hyderabad Tribunal in case of ***Inox Leisure Ltd. Vs Commissioner of Service Tax, Hyderabad [2022 (60) G.S.T.L. 326 (Tri. - Hyd.)]*** wherein it was held that a revenue sharing arrangement does not necessarily mean provision of service, unless the service provider and service recipient relationship is established. Further, it is a settled principle of law as stated in the ***Circular No 109/3/2009-ST dated 23.02.2009***

wherein it has been stated that once two contracting parties are acting on principal-to-principal basis, the activities are not covered under service tax. Thus appellant contented that the demand of service tax confirmed in the impugned order on this count is not sustainable.

5. Regarding the non-payment of service tax of Rs.60,97,878/- under commercial training and coaching centre services, the appellant submits that this demand has been confirmed on account of the following:

(i) Sale of Newspaper - 8.7 Lacs
(ii) Sale of Form and Prospectus - 8.58 Lacs
(iii) Sale of Magazines - 9.35 Lacs
(iv) Library subs. fine, dev. fees - 34.35 Lacs

5.1. Regarding the demand of service tax of Rs.8.7 lakhs on account of Sale of Newspaper – Jibika Dishari and Swabhumi, the appellant submits that Sale of newspaper tantamount to sale of goods which can never be subject to levy of service tax. Hence, this demand confirmed in the impugned order is not sustainable.

5.2. Regarding the demand of service tax of Rs.8.58 lakhs on the Sale of forms and prospectus, the appellant submits that this tantamount to sale of goods which can never be subject to levy of service tax.

5.3. Regarding the demand of service tax of Rs.9.34 lakhs on account of Sale of magazine namely RICE Times, the appellant submits that this tantamount to sale of goods which can never be subject to levy of service tax.

5.4. With regard to the amount received towards Library subscription, fine, library development charges, the Appellant submits that during the disputed period, they had a central library at their registered office. Any student, who wants to avail such library facility may become a member of the library where in the student may have access to books forming part of their curriculum or access to story books, journals etc., which are not part of the curriculum. The availment of library service is completely optional and has no connection with the course conducted by the Appellant. The same library facility can be made akin to any stand-alone libraries offering membership to readers. For the said facility, separate invoice is being raised by the Appellant towards library membership service, library development charges and no service tax is being charged by the Appellant from the students. Prior to July 2012, except specifically provided under the Finance Act, 1994, balance category of services were not subjected to service tax. Section 65(26) of the Finance Act, 1994 defined Commercial training or coaching services as any training or coaching provided by a commercial training or coaching centre. Further, Section 65(27) of the said act defined commercial training or coaching centre as any institute or establishment providing commercial training or coaching for imparting skill or knowledge or lessons on any subject or field other than sports. The Appellant submits that amount received towards library membership (optional) is not towards providing any Commercial training or coaching services under section 65(105)(zzc) of the Finance Act or under any taxable service liable to service tax under the Finance Act till 01.07.2012 and the entire

demand raised by the Ld. Principal Commissioner is completely baseless and liable to be dropped. Reliance is placed on the case of ***Aditya College of Competitive Exam Vs C.C.E., Vishakhapatnam [2009 (16) S.T.R. 154 (Tri-Bang)]***

5.5. The appellant submits that unless the allegation of fraud or collusion or willful misstatement or suppression of facts or intentful evasion of payment of tax is proved beyond reasonable doubt, the extended period of limitation cannot be invoked to demand service tax. As a result, proceeding if any, can be instituted only for a period of 12 months. In the Appellant's demand for only 2011-12 could have been raised vide SCN dated 15.10.2012. Thus, they submits that the demand confirmed by invoking extended period of limitation is liable to be set aside.

5.6. In view of the above submissions, the appellant contented that the demands of service tax confirmed in the impugned order along with interest and penalty is not sustainable.

6. In respect of the remaining demands confirmed in the impugned order, the appellant submits that short payment of Rs.2,10,073/- has been confirmed due to accrual accounting, which they agreed and paid along with interest before issue of the notice. They have also paid the service tax of Rs. 84,249/- along with interest confirmed on miscellaneous receipts. They have also paid the demand of interest, amounting to Rs.1,14,078/- for short payment of interest at the rate of 13% instead of 18% for certain delays. Further they have reversed the cenvat credit of 1,30,295/- held as not eligible, along with interest. They have also

contested the penalty of Rs.10,000/- imposed on account of improper registration since they claim that they were not required to obtain registration under 'Business Support Services' for providing infrastructure support service to CMC (issue no 2). As they have paid all these amounts prior to issue of the notice, no penalty imposable on these payments, which they are not contesting.

7. The Ld. A.R. reiterated the findings in the impugned order.

8. Heard both sides and perused the appeal documents.

9. We observe that the appellant is contesting the demand of service tax confirmed in the impugned order on account of three major issues.

9.1. Regarding the demand of service tax of Rs.35,86,321/- confirmed in the impugned order on account of non-payment of service tax under commercial training and coaching services on hostel fees received for non-residential courses, we observe that with respect to "Residential Courses" where accommodation is compulsory and the course fee includes Hostel Charges, Service tax was charged by the Appellant on the entire amount billed towards Course Fee and Hostel Charges. So far as Non-Residential courses are concerned, the accommodation facility is optional and subject to availability and the course fee does not include such accommodational charges. Since the facility provided by the Appellant to the students opting for Non-Residential courses are akin to residential accommodation, we find that the Appellant did not charge service tax on the amount billed for the said

accommodation facility, which is amply clear from the sample copy of fee structures submitted by them.

9.2. In this regard, the Appellant referred the clarification provided by Board on renting of immoveable property service vide Circular No DOF/334/1/2007-TRU dated 28.02.2007, wherein it has been clarified that the residential accommodation such as hotels, hostels, boarding houses, holiday accommodation, tents, camping facilities have been specifically exempted from service tax. In view of the above clarification, it becomes absolutely clear that standalone accommodation service in a hostel for residential purposes would squarely fall under the exclusion clause provided under renting of immoveable property services defined under section 65(90a) of the Finance Act. In view of the above, we hold that the stand-alone hostel charges collected for non-residential courses, have no connection with Commercial Training and Coaching services as defined under section 65(105)(zzc) of the Finance Act, in as much as, even if any student, who do not avail this service, would continue to avail the course offered by the Appellant and therefore, the question of payment of service tax does not arise. This view has been supported by the decision in the case of **Aditya College of Competitive Exam Vs. C.C.E., Visakhapatnam [2009 (16) S.T.R. 154 (Tri. - Bang.)],.** The relevant para of the said decision is reproduced below:

> *"7. We have gone through the records of the case carefully The undisputed facts are the activities undertaken by the appellants came into*

service tax net with effect from 1-7-2003 It is seen that the appellants had collected an amount of Rs. 80,32,000/- in May and June 2003 for the services rendered by them. In terms of Section 67(3) of the Finance Act, 1994 which relates to the valuation of taxable service for charging service tax, the gross amount charged for taxable service shall include any amount received towards the taxable service before, during or after provision of such services. In fact, this provision was introduced for the first time by way of Explanation (3) of Section 67 of the Finance Act, on 13-5-2005 which reads as follows-:

> *"For the removal of doubt it is hereby declare that the gross amount charged for taxable service shall include any amount received towards the taxable service before, during or after provision of such services."*

For the first time only with effect from 13-5-2005, there is provision for including the amount received even prior to rendering of service in the gross amount for the purpose of service tax. In the present case the period is prior to even 1st July 2003 In other words it is prior to the amendment of Section 67 with effect from 13-5-2005. The said amendment cannot be applied retrospectively Even the Board's Circular is dated Nov 5, 2003 which is after the impugned period in the present appeal in any case, the said Circular had been issued even prior to the amendment of Section 67 Without going into the maintainability of the said Circular we are of the firm view that the said Circular also cannot be applied with retrospective effect. Even the amendment of Rule was also done only on July 9, 2004. The Service Tax Rules were amended with effect from 9-7-2004 by adding the following Explanation:-

> *"Explanation - For the removal of doubt it is hereby clarified that in case value of taxable service is received before providing said service, service tax shall be paid on the value of service attributable to the relevant month, or quarter, as the case may be."*

On a careful reading of the amendment in Section 67 and Service Tax Rules reveals that all these changes had taken place only after the disputed period in the appeal. There is no provision for applying the said changes retrospectively. Further a part of the demand relates to inclusion of Mess charges. By no stretch of imagination, the Mess charges collected can be considered as receipt for rendering the service of Commercial Training and Coaching The Commissioner has stated that there is no provision for excluding the said charges. We would like to emphasis that there is no provision for inclusion of any amount whatsoever collected by the appellants. There should always be a nexus between the amount collected and services rendered. The Mess charges have been collected for availing the facility of the mess. The mess is meant for providing food to the trainees. It cannot be brought under the category of receipt for 'Commercial Training or Coaching and subject to service tax Further we find that the show cause notice was issued based on some Audit objection. There is no justification for invoking the longer period. Therefore the demand is also hit by time bar. In view of the above findings, we do not find any merit in the impugned order The demand is not sustainable. Once the demand is not sustainable, the imposition of penalty/demand of interest also cannot be upheld. Hence the impugned order is set aside and the appeal is allowed with consequential relief if any.

9.3. Thus, by relying on the decision cited supra, we hold that the demand of service tax of Rs.35,86,321/- confirmed in the impugned order on account of non-payment of service tax under commercial training and coaching services on hostel fees received for non-residential courses, is not sustainable and hence we set aside the same.

10. Regarding non-payment of service tax of Rs.25,50,658/- confirmed in the impugned order under business support services on share of fees received from CMC Limited ('CMC'). We observe that they have entered into an Education and Training Service Franchise Agreement with CMC whereby CMC and the Appellant will collaborate to provide career development courses directly to the students and no economic benefit is derived between the Appellant and CMC. In terms of the said arrangement, the appellant will be undertaking the courses and teaching the students directly as per the guidelines laid down by the CMC. As per Clause 11(i)(b) of the said arrangement, the entire fees collected from the students together with service tax was handed over by the Appellant to CMC who duly discharged the service tax on the entire amount of the fee and CMC passed on 75% of the revenue (after deducting service tax) to the Appellant as their share of the course fee. In this regard, we observe that for the purposes of levy of service tax there should be a service provider and service Recipient relationship. If the same is not present, then the basic question of levy of service tax does not arise.

10.1. In support of this view, we place our in the case of ***Inox Leisure Ltd. Vs Commissioner of Service Tax, Hyderabad [2022 (60) G.S.T.L. 326***

(Tri. - Hyd.)] wherein it was held that a revenue sharing arrangement does not necessarily mean provision of service, unless the service provider and service recipient relationship is established. The relevant part of the said decision is reproduced below:

> *"19. The Circular dated 23-2-2009 issued by the Central Board of Excise and Customs, in fact supports the case of the appellant. The relevant portion of the Circular which is in connection with service tax on movie theatres, is reproduced below:*
>
> *"2.4 The arrangement most commonly entered into between a theater owner and a distributor is that the theater owner screens the movie for fixed number of days under a contract The proceeds earned through sale of tickets go to the distributor out the theatre owner receives a lixed sum depending upon the number of days of screening in this arrangement, the advertisement and display of posters, etc., is done by the distributor Under this arrangement, the fixed amount contracted is given to the theater owner by the distributor irrespective of the fact whether the movie runs well or not However, there is no rental arrangement between the theater owner and the distributor as in the arrangement at paragraph 2.1 above. A view has been expressed that in this arrangement, the theater owner provides Business Support Service to the distributor and hence is liable to pay service tax on the fixed amount received by the theater owner*
>
> *2.5 The matter has been examined By definition Business Support Service' is a generic service of providing support to the business or commerce of the service receiver in other words the principal activity is to be undertaken by the client while assistance or support is provided by the taxable service provider in the instant case the theatre owner screens/exhibits a movie that has been provided by the distributor Such an exhibition is not a support or assistance activity but is an activity on its own accord That being the case such*

an activity cannot fall under Business Support Service

3. In the light of above it is clarified that screening of a movie is not a taxable service except where the distributor leases out the theater and the theater owner get a fixed rent in such case, the service provided by the theater owner would be categorized as 'Renting of immovable property for furtherance of business or commerce and the theater owner would be liable to pay tax on the rent received from the distributor. The facts of each case and the terms of contract must be examined before a view is taken.

4. All pending cases may be disposed of accordingly In case any difficulty is faced in implementing these instructions, the same may be brought to the notice of the undersigned."

(Emphasis supplied)

20. The subsequent Circular dated 13-12-2011 issued by the Central Board of Excise and Customs, apart from the fact that it would not be applicable for confirming a demand for any period prior to 13-12-2011, would also not come to the aid of the Department. The relevant portion of the Circular is reproduced below:

9. Thus, where the distributor or sub-distributor or area distributor enters into an arrangement with the exhibitor or theatre owner with the understanding to share revenue/profits and not provide the service on principal-to-principal basis, a new entity emerges, distinct from its constituents. As the new entity acquires the character of a "person", the transactions between it and the other independent entities namely the distributor/sub-distributor/area distributor and the exhibitor, etc., will be a taxable service Whereas, in cases the character of a "person" is not acquired in the business transaction and the transaction is as on principal-to-principal basis the tax is leviable on either of the constituent members based on the nature of the transaction and as per rules of classification of service as embodied under Section 65A of Finance Act, 1994.

(Emphasis supplied)

> *21. The impugned order has confirmed the demand on the basis that the appellant provided infrastructure support services to the appellant. However, the show cause notice alleged that the appellant was providing operational and administrative assistance with supplier The Commissioner could not have gone beyond the scope of the show cause notice to confirm the demand. This apart, in view of the decision of the Supreme Court in Faqir Chana Gulati and the decision of the Tribunal in Mormugao Port Trust, no service tax can be levied on the appellant under BSS.*

10.2. We find that the above decision of the Tribunal, Hyderabad has been affirmed by the Hon'ble Apex Court in ***Commissioner of Service Tax Vs Inox Leisure Ltd. [2022 (61) G.S.T.L. 342 (S.C.)]***, wherein, the Hon'ble Supreme Court rejected the appeal filed by the revenue against the order passed by the Hyderabad Tribunal.

10.3. Further, it is a settled principle of law as stated in the ***Circular No 109/3/2009-ST dated 23.02.2009*** wherein it has been stated that once two contracting parties are acting on principal-to-principal basis, the activities are not covered under service tax. In this case, the agreement between the parties clearly shows that it is a Revenue Sharing agreement entered on principal to principal basis. The relevant part of the said circular is reproduced below:

> *…..".....*
>
> *2.2. Another type of arrangement is where the contract between the theatre owner and the distributor is on revenue sharing basis i.e. a fixed and pre-determined portion i.e. percentage of revenue earned from selling the tickets goes to the theater owner and the balance goes to the distributor.* ***In this case,***

> ***the two contracting parties act on principal-to-principal basis and one does not provide service to another. Hence, in such an arrangement the activities are not covered under service tax****.*
>
> *2.5. The matter has been examined. By definition 'Business Support Service' is a generic service of providing 'support to the business or commerce of the service receiver'. In other words, the* ***principal activity is to be undertaken by the client while assistance or support is provided by the taxable service provider. In the instant case the theatre owner screens/exhibits a movie that has been provided by the distributor. Such an exhibition is not a support or assistance activity but is an activity on its own accord****. That being the case such an activity cannot fall under 'Business Support Service'."*
>
> ***[Emphasis added]***

10.4. In support of this view, we refer to the decision in the case of ***Neeraj Prasad Vs. Commissioner of Central Excise, Kanpur [2013 (31) S.T.R. 100 (Tri. - Del.)]***, wherein the **taxpayer concerned was also engaged in provision of commercial training and coaching services under an arrangement of revenue share**. In the said decision, the Tribunal of Delhi has observed as under:

> *"we find that the appellant's contract with CLIL is like a revenue sharing arrangements under which the appellant operate commercial coaching and training centres for CLIL and get a portion of the fee collected from the students.*

> *The Board in its Circular dated 23-2-2009 has clarified that in the revenue sharing arrangements where two contracting parties act on principal-to-principal basis one does not provide service for another and such activities are not covered under service tax. From the appellant's contract with CLIL, it appears that the appellant cannot be said to be an agent of CLIL and the transaction between them are on principal-to-principal basis. We are, therefore, of the view that the above Circular of the Board is applicable to the facts of the case."**

[Emphasis added]

10.5. We have perused the Education and Training Service Franchise Agreement entered between CMC and the Appellant. The terms of the agreement clearly shows that it is a Franchisee Agreement. Thus, if at all service tax is payable, it will be under the category of 'Franchisee Service'. But, no service tax has been demanded under the category of ' Franchisee Service' in the impugned order.

10.6. As the agreement between the parties clearly shows that it is a Revenue Sharing agreement entered on principal to principal basis, we hold that no service tax liability arises on the amount received by the appellant from CMC as a part of their share as per the agreement. Accordingly, we hold that the demand of service tax confirmed in the impugned order on this count is not sustainable and hence we set aside the same.

11. Regarding the non-payment of service tax of Rs.60,97,878/- under commercial training and coaching centre services, we observe that service tax of Rs. 8.7 lakhs has been confirmed on sale news

papers, service tax of 8.58 lakhs has been confirmed on sale of Forms and Prospectus and service tax of Rs. 9.35 lakhs has been confirmed on sale of Magazines. We observe that Sale of Newspaper – Jibika Dishari and Swabhumi, Sale of magazine namely RICE Times and Sale of forms and prospectus of the appellant, are all tantamount to sale of goods which is not leviable to service tax. Thus, the demands confirmed in the impugned goods on account of the above said sale goods is liable to be set aside and accordingly, we set aside the same.

11.1. With regard to the amount received towards Library subscription, fine, library development charges. We observe that the availment of library service is completely optional and has no connection with the course conducted by the Appellant. We observe that the library facility is akin to any stand-alone libraries offering membership to readers. For the said facility, we find that separate invoice is being raised by the Appellant towards library membership service, library development charges and no service tax has been charged by them.

11.2. We observe that Section 65(26) of the Finance Act, 1994 defines commercial training or coaching services as any training or coaching provided by a commercial training or coaching centre. Further, Section 65(27) of the said act defined commercial training or coaching centre as any institute or establishment providing commercial training or coaching for imparting skill or knowledge or lessons on any subject or field other than sports. We observe that the library membership (optional) given by the appellant is not towards providing any Commercial training or coaching services under

section 65(105)(zzc) of the Finance Act or under any taxable service liable to service tax under the Finance Act till 01.07.2012 and hence the same is liable to be dropped.

11.3. In support of this view, we rely upon the decision in the case of ***Aditya College of Competitive Exam Vs C.C.E., Vishakhapatnam [2009 (16) S.T.R. 154 (Tri-Bang)],*** wherein it has been held as under:

> *"There is no provision for inclusion of any amount whatsoever collected by the appellants. There should always be a nexus between the amount collected and services rendered."*

11.4. As there is no nexus between the Library subscription collected by the appellant and the Commercial coaching service rendered by the appellant, we hold that the demand of service tax confirmed in the impugned order on this count is not sustainable and hence we set aside the same.

12. In respect of the remaining demands confirmed in the impugned order, we observe that short payment of Rs.2,10,073/- has been confirmed due to accrual accounting, which the appellant agreed and paid along with interest before issue of the notice. The appellant has also paid the service tax of Rs. 84,249/- along with interest confirmed on miscellaneous receipts before issue of the notice. They have also paid the demand of interest, amounting to Rs.1,14,078/- for short payment of interest at the rate of 13% instead of 18% for certain delays. Since the demand on account of business support services to CMC is held to be

unsustainable, penalty of Rs. 10,000/- imposed on account of improper registration is also set aside. Further they have reversed the cenvat credit of 1,30,295/- held as not eligible, along with interest, in the impugned order. As they have paid all these amounts prior to issue of the notice, we hold that no penalty imposable on these payments which they are not contesting.

13. We also observe that the appellant has raised the issue of limitation. We observe that unless the allegation of fraud or collusion or willful misstatement or suppression of facts or intentful evasion of payment of tax is proved beyond reasonable doubt, the extended period of limitation cannot be invoked to demand service tax. In this case, the appellant has acted on a bonafide belief that they are not liable to service tax on the basis of various judicial pronouncements available on these issues. Accordingly, we observe that proceeding if any, can be instituted only for a period of 12 months. In the Appellant's case, demand for only 2011-12 could have been raised vide SCN dated 15.10.2012. Thus, we hold that the demand confirmed by invoking extended period of limitation is liable to be set aside. However, we observe that the demand is respect of the three major issues disputed by the appellant are liable to be set aside on merit itself. Hence, we hold that the demands confirmed in the impugned order does not survive.

14. In view of the above findings, we pass the following order:

(i) The demand of service tax of Rs.35,86,321/- confirmed in the impugned order on account of non-payment of service tax under commercial training

and coaching services on hostel fees received for non-residential courses is set aside.

(ii) The demand of service tax of Rs.25,50,658/- confirmed in the impugned order under business support services on share of fees received from CMC Limited, is set aside.

(iii) Service tax of Rs.60,97,878/- confirmed in the impugned order on account of sale of Forms, News papers and Library subscription under commercial training and coaching centre services, are set aside.

(iv) We uphold the demand confirmed on account of short payment of Rs.2,10,073/- due to accrual accounting. The service tax of Rs. 84,249/- paid along with interest on miscellaneous receipts is upheld. The reversal of cenvat credit of 1,30,295/- along with interest is upheld. Since all the amounts was paid prior to issue of the notice, demand of penalty imposable on these payments are set aside.

(v) The penalty of Rs.10,000/- imposed on account of improper registration is set aside

(vi) The appeal filed by the appellant is disposed on the above terms.

(Order Pronounced in Open court on 01.05.2025)

(ASHOK JINDAL)
MEMBER (JUDICIAL)

(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

RKP