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

REGIONAL BENCH- COURT NO. 3

SERVICE TAX Appeal No. 10109 of 2022-DB
(Arising out of OIA-AHM-EXCUS-001-APP-025-2021-22 Dated-24.12.2021 passed by Commissioner of Central Excise, Customs and Service Tax-SERVICE TAX - AHMEDABAD)

INDIAN INSTITUTE OF MANAGEMENT ....Appellant
DR VIKRAM SARABHAI MARG NR ANDHAJAN MAHAMANDAL
VASTRAPUR, AHMEDABAD-GUJARAT

VERSUS

C.S.T. SERVICE TAX- AHMEDABAD ....Respondent
7 TH FLOOR, CENTRAL EXCISE BHAWAN, NR. POLYTECHNIC
CENTRAL EXCISE BHAVAN, AMBAWADI,
AHMEDABAD, GUJARAT-380015

APPEARANCE:
Shri Paritosh Gupta, Advocate appeared for the Appellant
Shri Ghanasyam Soni, Additional Commissioner (Authorized Representative) for the Respondent

CORAM: HON'BLE MR. RAJU, MEMBER (TECHNICAL)
HON'BLE MR. SOMESH ARORA (JUDICIAL)

Final Order No. A/ 10197 /2023

DATE OF HEARING:02.02.2023
DATE OF DECISION:02.02.2023

SOMESH ARORA

The issue involved initially in this matter as per the show cause notice was whether services provided by the appellants of providing scores of candidates appearing in the CAT Examination, conducted by IIM-Ahmedabad to other IIMs was covered under "Mailing List Compilation and Mailing Service'. The mailing lists were of the scores of various students and were being sent, as per their requirements to different institutions. The other issue involved even at present is whether the show cause notice earlier issued of the extended period would be ground enough to justify sequel demand show cause notice for later period by way of a letter only as per the amended provisions of Finance Act, 1994. Initially both the issues were decided by the adjudicating authority against the appellant. The appellant being aggrieved by the order approached the Commissioner (Appeals), who vide its findings in para 6 of the impugned order agreed that the services provided after coming into force of negative list under mailing list compilation and mailing service in terms of Section 65(63a) read with Section 65(105)(zzzg) of Chapter 5 of the Act does not seem to be legally correct on the facts of the present case. Thereafter, the learned Commissioner (appeals) did his own fact findings and without affording full and proper opportunity to the appellants held that the exemption meant for educational institutions, is required to be denied to the appellant in view of the fact that no evidence has been brought on records by the appellants, that the same was provided to the educational institutions only. Appellants are aggrieved by the findings to the extent that they were denied to produce underlying evidence in support of the claim that the services were in fact provided all to the education institutions only and therefore, they were eligible for exemption contemplated by the Commissioner (Appeals). We find that at this stage, the appellant has tried to produce some evidences to justify that the service was indeed provided to education institutions. However, since there is finding to the contrary and appellants have not been given a fair chance to produce all evidences in support of their claim, even in a matter where Commissioner (Appeals) was differing from findings of the original authority and has done his own fact findings, there has been violation of natural justice. He has only provided limited opportunity to the appellants to rebut the fresh case and the same needs to be afforded fully, to allow to produce all evidences to justify their claim. Appellants have also raised the legal issue of whether the sequel demand by way of a letter only will be justified in the facts and circumstances of the case.

2. In view of the foregoing discussion, we are of the view that the limited opportunity afforded to the appellants in view of specific facts of this case, whereby the order-in-original has been differed with, does not

meet the ends of justice and full opportunity to adduce evidence needs to be afforded by the Commissioner (Appeals).

3. We, therefore, while remanding the matter direct that while examining any evidence, Commissioner (Appeals) will be free to do his own further fact findings including calling for report on any aspect relevant to the passing of order from the original authority and field units but will give opportunity to appellants to rebut the same. While giving his order, he should also deal with the legal arguments put forth by the appellants about validity of the demand letter and non existence of any elaborate show cause notice as made out by the appellants.

4. Appeal is allowed by way of remand.

(Dictated and Pronounced in the open court)

(RAJU)
MEMBER (TECHNICAL)

(SOMESH ARORA)
MEMBER (JUDICIAL)

Neha