SUPREME COURT OF INDIA
Commissioner of Central Excise
v.
Sunwin Technosolution (P.) Ltd.
DR. MUKUNDAKAM SHARMA AND ANIL R. DAVE, JJ.
CIVIL APPEAL NO. 8084 OF 2010
SEPTEMBER 13, 2010

1. Having heard learned counsel appearing for the parties and for the reasons stated in the application, the delay in filing the special leave petition is condoned. Application for condonation of delay stands disposed of.

2. Leave granted.

3. By filing the present appeal, the appellant has challenged the judgment and order, dated 6-4-2009 passed by the Jharkhand High Court affirming the decision and the order passed by the CESTAT, Kolkata holding that in view of issuance of the notification, dated 7-6-2005 which has come into effect from 16-6-2005 service-tax would not be payable by computer training institutes like the respondent herein for the period from 10-9-2004 to 15-6-2005.

4. Counsels appearing for the parties have taken us through the records and on perusal thereof, we find that the earliest notification, which is placed on record before us, was issued by the competent authority on 20-6-2003. By the said notification, certain institutes imparting a special kind of training were exempted from payment of service-tax. The aforesaid exemption was granted in exercise of the powers conferred under section 93 of the Finance Act, 1994 (32 of 1994) (in short, "the Act"). A bare perusal of the said notification would indicate that by issuing the said notification, the Central Government intended to exempt the taxable services in relation to commercial training or coaching imparted by (*a*) vocational training institute; (*b*) a computer training institute; and (*c*) a recreational training institute. In the said notification, as to what is a vocational training institute and what is a computer training institute and also as to what is a recreational training institute have been defined under the *Explanation* incorporated in the said notification. When we look into the aforesaid definitions given to the expressions "vocational training institute", "computer training institute" and "recreational training institute", we find that each one of them constitutes a particular type of coaching centre imparting specific training mentioned against each one of them and they are of different nature and each one of them is distinguishable from the other. The aforesaid notification came into force on 1-7-2003 and remained in force till 29-2-2004.

5. Thereafter another notification came to be issued by the Government of India. The said notification was a fresh notification whereby the Central Government exempted the taxable services provided by commercial training or coaching by a vocational training institute or a recreational training institute. In the said notification, an *Explanation* was appended wherein only the definitions of "vocational training institute" and "recreational training

institute" are given and the definition of "computer training institute" was specifically excluded therefrom. A comparative study of the two notifications shows that the same definitions of "vocational training institute" and "recreational training institute" as given under the notification, dated 20-6-2003, have also been given in the notification, dated 10-9-2004. It is needless to state that it is apparent on the face of the reading of the notification, dated 10-9-2004 that computer training institute is neither included in the said notification nor it is defined and it specifically stood excluded from the ambit of the said notification.

6. Subsequent thereto another notification, dated 7-6-2005 came to be issued. The said notification also was issued in exercise of the powers conferred under section 93 of the Act. By issuing said notification, the Central Government amended the notification, dated 10-9-2004 by incorporating a proviso thereto, which reads as follows:

"S. No.	*Notification number and date*	*Amendments*
(1)	*(2)*	*(3)*
1 to 3		
4.	24/2004-Service-tax, dt. the 10th Sept., 2004 [G.S.R. 598 (E)], dt. the 10th Sept., 2004	In the said notification ,— (*i*) in the opening para , the following proviso shall be inserted '**Provided** that nothing contained in this notification shall relation to commercial training or coaching by a computer (*ii*) in the *Explanation*, after cl. (*ii*), the following clause (*iii*) '"Computer training institute" means a commercial coaching or training relating to computer software or hardware'."

It is also stated in para 2 of the said notification that the aforesaid notification would come into force on the 16-6-2005.

7. Counsel appearing for the respondent has submitted that by inserting the aforesaid proviso in the notification, dated 10-9-2004 effective from 16-6-2005, the Central Government intended that so far as computer training institute is concerned, it would also stand exempted and its liability to pay such service tax arises with effect only from 16-6-2005 and not prior to that date.

8. We have considered the said submission. The notification, dated 10-9-2004 was issued and made effective from the date of its issuance. The same did not include the concept of "computer training institute" within its ambit and under the aforesaid notification, exemption was only granted to vocational and recreational training institute. A computer training institute which is defined and was included in the notification, dated 20-6-2003 was specifically excluded from the purview of the notification, dated 10-9-2004. The Central Government while doing so was fully conscious of the implication thereof and also of the

fact as to what constitutes a computer training institute as defined in the notification, dated 20-6-2003.

9. Therefore, in our considered opinion, the Central Government was fully conscious of the fact that the said computer training institute should not get the exemption and intended the same to be shown by specifically excluding the same from the purview of the notification, dated 10-9-2004. The notification was also in operation from the date of its issuance, *i.e.,* from 10-9-2004 to 15-6-2005 without there being any other intendment.

10. So far as the contention of the learned counsel for the respondent in respect of the contents of the notification, dated 7-6-2005 is concerned, in our considered opinion, the said amendment was brought in by adding the proviso more or less in the nature of clarification and the same was made effective from 16-6-2005. The Government thought it fit to make it abundantly clear by issuing the said notification. The liability, so far as the respondent is concerned, to pay the service-tax between the period from 10-9-2004 to 15-6-2005, therefore, subsisted.

11. In terms thereof, we dispose of this appeal by allowing the same to the aforesaid extent but leaving the parties to bear their own costs.