

Service tax not payable on donations received from the members of the trust for advancement of yoga

The CESTAT, Delhi in *M/S. Bharat Swabhiman (NYAS) v. Commissioner Customs, Central Excise & Service Tax, Dehradun, [Service Tax Appeal No. 52849 of 2016 dated January 01, 2022]* set aside the order confirming the demand of service tax. Held that, service tax will not be levied on the donations received by a trust from its members and on freight charges paid towards the activity of advancement of yoga. Further held that, activities can't be covered under Goods and Transport Agency Service ("**GTA Service**") where consignment notes have not been issued.

Facts:

M/s. Bharat Swabhiman (Nyas) ("**the Appellant**") is a trust, constituted with an aim to carry out charitable objects, including yoga education and training for achieving a disease-free and healthy India. Further, the Appellant is engaged in organizing residential as well as non-residential yoga camps to propagate yoga training and Vedic knowledge, for which it received donations from its members.

An enquiry was conducted by the Commissioner Customs, Central Excise & Service Tax, ("**the Respondent**") in connection with the with non-payment of service tax on membership donations, freight charges paid by the Appellant, and on the amount for hiring motor vehicles. Various Show Cause Notices ("**SCNs**") were issued to the Appellant, demanding service tax with interest and penalty under the category of 'club or association service', 'GTA Service' and 'rent-a-cab operator service' for the period January 2009 to March 2013 which were adjudicated by the Respondent by a common order dated July, 13, 2016 ("**the Impugned Order**") and the demand of service tax of INR 4,83,52,583/- was confirmed with respect to the membership donations and freight charges paid by the Appellant and the demand of service tax of INR 61,66,706/- was dropped.

Being aggrieved, the Appellant has filed this Appeal.

The Appellant contended that SCNs issued have failed to invoke any grounds on which the demand has been proposed and such demand of service tax on membership donations is not sustainable as it is exempted under **Notification No. 25/2012-Service Tax dated June 20, 2012 and Notification No. 42/2016-Service Tax dated September 26, 2016** (“the Exemption Notifications”) that notified non-levy of service tax on the services by way of advancement of yoga provided by entities.

Issue:

Whether the Appellant is liable to pay the demand of service tax on the donations received from its members and on freight charges paid under the reverse charge mechanism?

Held:

The CESTAT, Delhi in **Service Tax Appeal No. 52849 of 2016 dated January 01, 2022** held as under:

- Noted that, the Appellant satisfied the conditions mentioned under the Exemption Notifications i.e. the entity must be registered under Section 12AA of the Income Tax Act, 1961 (“**the Income Tax Act**”) and activities must be carried out by way of charitable activities.
- Observed that, as per the **Exemption Notifications**, the service of education and training in yoga provided by the Appellant is towards the activity of advancement of yoga, and the membership donations collected w.r.t. the same would be exempt from payment of service tax for the period from July 01, 2012 to October 20, 2015.
- **Analysed** Section 65B (26) of the Finance Act, 1994 (“**the Finance Act**”) and noted that no consignment notes have been issued by the Appellant. Therefore, the activities cannot be said to be covered under GTA services.

- Set aside the Impugned Order and held that, service tax liability could not have been fastened on the Appellant under the reserve charge mechanism.
- Further, held that the Appellant is exempted from payment of service tax under the Exemption Notifications.

Relevant Provisions:

Section 65B(26) of Finance Act

“Interpretations-

(26) goods transport agency means any person who provides service in relation to transport of goods by road and issues consignment note, by whatever name called.”

Notification No. 25/2012-Service Tax dated June 20, 2012:

Whereas, the Central Government is satisfied that in the period commencing on and from the first day of July, 2012 and ending with the 20th day of October, 2015 (hereinafter referred to as the said period) according to a practice that was generally prevalent, there was non-levy of service tax on the services by way of advancement of Yoga provided by entities registered under section 12AA of Income-tax Act, 1961 (43 of 1961) and this service was liable to service tax, in the said period, which was not being paid according to the said practice.

Now, therefore, in exercise of the powers conferred by section 11C of the Central Excise Act, 1944 (1 of 1944), read with section 83 of the Finance Act, 1994 (32 of 1994), the Central Government hereby directs that the service tax payable under section 66B of the Finance Act, 1994, on the service by way of advancement of Yoga provided by entities registered under section 12AA of Income-tax Act, 1961 (43 of 1961) in the said period, but for the said practice, shall not be required to be paid.”

Notification No. 42/2016-Service Tax dated September 26, 2016 (relevant para):

“In exercise of the powers conferred by sub-section (1) of section 93 of the Finance Act, 1994 (32 of 1994) (hereinafter referred to as the said Act) and in supersession of notification number 12/2012-Service Tax, dated the 17th March, 2012, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R. 210(E), dated the 17th March, 2012, the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts the following taxable services from the whole of the service tax leviable thereon under section 66B of the said Act, namely :

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4. *Services by an entity registered under section 12AA of the Income tax Act, 1961 (43 of 1961) by way of charitable activities;”*

(Author can be reached at info@a2ztaxcorp.com)

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