

Commercial Training or Coaching Services

Commercial Training or Coaching Services have been brought within the service tax net ever since 01-07-2003. The basic purpose of this article is to bring to the notice of knowledgeable readers latest statutory developments and case laws. In order to understand the true nature of these services, it is advisable to start with following relevant statutory definitions:-

According to Section 65(105)(zzc) of Finance Act 1994 (which governs the levy of Service Tax and hereinafter referred as “Act”) any service provided or to be provided, to any person, by a commercial Training or Coaching Centre in relation to commercial training or coaching is taxable service.

‘Commercial Training or Coaching’ means any training or coaching provided by a commercial training or coaching centre. (Section 65(26) of Act)

‘Commercial Training or Coaching Centre’ means any institute or establishment providing commercial training or coaching for imparting skill or knowledge, or lessons on any subjects or field other than sports, with or without issuance of a certificate and includes coaching or tutorial classes but does not include pre-school coaching and training centre or any institute or establishment which issues any certificate or diploma or degree or any educational qualification recognized by law for the time being in force. (Section 65(27) of Act)

Meaning of terms “Training”, “Coaching”, “Commercial” and “Education”

The dictionary meaning of “Training” is as under:-

- (A) To teach (a person, animal, oneself etc) a specified skill especially by practice.
- (B) Cause or grow in a particular way, instruct, exercise.
- (C) The process/experience of being trained.
- (D) Process of learning the skills needed to do a particular job/activity.

The dictionary meaning of word “Coaching” is as below:-

- (A) Preparing a student in a subject or for an examination by a private tutor.
- (B) Special teaching in a particular subject, especially in order to prepare the students for an examination.

The dictionary meaning of term ‘commercial’ is as under:-

- (A) Profitable
- (B) Marketable
- (C) Saleable
- (D) For profit

Incidentally Antonym of the term Commercial is ‘charitable’.

The dictionary meaning of term 'education' is as follows:-

- (A) The act or process of being educated, systematic instruction.
- (B) The process of teaching or learning.
- (C) The theory and practice of teaching.

A case law is also quoted for better understanding of term 'education'. In case of **Loka Shikshana Trust V CIT AIR 1976 6 SC 10** it was opined as under:-

“Education is the systematic instruction, schooling or training given to the young in preparation for the work of life. It also connotes the whole course of scholastic instruction which a person has received. Education is the process of training and developing the knowledge, skill, mind and character of students by formal schooling.”

Besides, in order to appreciate the difference among the above three terms, following case laws are being quoted:-

- (i) In **Barry V Hughes (1973) 1 All ER 537 (Ch D)** it was held that 'education' denotes training of mind in contradistinction to training in manual skills.
- (ii) In the case of **Magnus Society V Commissioner of Customs & Central Excise, Hyderabad -2009 (13) STR 509 (Tri-Bang)** it has been viewed that Education has a larger scope. Education may include coaching or training and not vice versa. Coaching or training is a very narrow activity imparting skill in a particular discipline. On the other hand, education is a broader term which is a process of development of personality of body, mind and intellect.

Now, the most difficult proposition to decide is what should be commercial in nature. There can be following three possibilities in this regard:-

- (i) Whether relevant Educational Institution should be commercial in nature?
- (ii) Whether relevant Training or Coaching should be commercial in nature?
- (iii) Whether relevant Educational Institution as well as concerned Training or Coaching should be commercial in nature?

Earliest Clarification issued by the Department:

First of all Circular No. 59/8/2003-ST dated 20-06-2003 was issued by the department wherein it, inter alia, gave certain clarifications regarding Commercial Training or Coaching Services. The gist of this clarification is given below:-

- (i) Vocational Coaching & Training Services provided by typing & shorthand institutes, TV/vehicle repair training institutes, tailoring institutes, industrial training institutes, foreign languages institutes, hobby classes, institutes teaching martial arts, painting, dancing etc would not be subject to service tax.
- (ii) Exemption from payment of service tax has been granted to those Commercial Training or Coaching Centres which provide services forming an essential part of the course or curriculum leading to issuance of recognised certificate, diploma, degree or any other educational qualification.

- (iii) Coaching provided by postal means would be subject to Service Tax. Service tax will be levied on the gross amount including postal charges.
- (iv) Service Tax is not applicable on those institutes which impart education for obtaining recognised degrees/diplomas/certificates even if such institutes impart training for competitive examination, various entrances tests.
- (v) Individuals going (in their independent capacity) to houses to impart tuition/coaching would not be subject to service tax because service tax is applicable only on institutions/establishments. However, if coaching or training centre provides commercial coaching by sending individuals to the premises of service receivers, such services would subject to levy of service tax because in this case individuals are rendering services on behalf of an institution.
- (vi) If employers themselves provide any free summer/in-house training to their employees, no service tax is chargeable. However, if the employer hires an outside commercial coaching or training centre for imparting some training to its employees, then the payment made by the said employer to such coaching centre will be chargeable to service tax.

The above Circular has been technically withdrawn with the issuance of master circular no 96/7/2007 dated 23-08-2007. However, the principles elucidated by the above Circular still hold good.

Further, it is worth mentioning here that before the issuance of Circular No. 107/1/2009 dated 28-01-2009 various Tribunals were generally of the opinion that the term “Commercial” has to be read in relation to the Educational Institution and consequently “Commercial Training or Coaching Services” provided or to be provided by Commercial Educational Institutions alone were held to be subject to levy to Service Tax. In different words, Commercial Training or Coaching Services provided by Charitable or non-profit Educational Institutions were held to be outside the purview of levy of Service Tax.

In support of this inference following cases are important to consider:-

(A)Case of Great Lakes Institute of Management Ltd

In this case i.e. **Great Lakes Institute of Management Ltd. Vs CST (2008) 2 STT 296 (Chennai-CESTAT)** it has been held that training or coaching services rendered by appellants i.e. Great Lakes Institute of Management Ltd. (hereinafter referred as “GLIM”)are not subject to levy of Service Tax because GLIM (being a non-profit company) is not “Commercial” in nature. Consequently, aforementioned services provided by GLIM become non-commercial in nature and do not attract levy of Service Tax. In order to provide greater insight into this case, the **brief facts** as well as relevant portion of detailed **reasoning** of the Tribunal in arriving at its conclusion are given below:-

Brief Facts:-

In accordance with the provisions of Section 25 of Companies Act 1956 GLIM was incorporated as a Not For Profit Company. Further, GLIM was registered as a Public Charitable Trust under Section 12AA of Income Tax Act 1961. Following were some of the **main objects** of GLIM as per its Memorandum of Association:-

1. To establish and run educational institutions.
2. To impart coaching to students for various Post Graduate, Graduate, and Under Graduate Courses.

Besides, following were the **incidental or ancillary objects** for the purpose of attainment of above main objects:-

1. To enter into collaboration with domestic and foreign institutions for facilitating imparting of education.
2. To raise funds by way of subscription from Members, Donations, Grants and investing such funds in shares, securities or other form of movable or immovable properties.

Relevant portion of detailed reasoning of the Tribunal

1. “The provision of education by an institution will attract service tax only if the institution is a commercial concern. A commercial concern is run with the sole object of making profit. In the case of appellants (i.e. GLIM) no individual gains any profit by such operations. The Memorandum of Association clearly spells out that no income earned by the company shall be paid by way of dividend, bonus or otherwise by way of profit to any member of the company or to anybody else through the members. If any surplus remains when the company is wound up, it shall be transferred to another institution run for the same object as the company or for some charitable object. These facts indicate that GLIM is not a commercial concern and therefore, training or coaching rendered by it is not liable to service tax as ‘commercial training or coaching’.
2. The primary object of GLIM is to impart education. Profit making is not its main motive. The gist of the several judicial pronouncements is that profit motive characterizes a commercial concern as against general public utility in the case of a charitable organization. Therefore, GLIM is not a commercial concern and the training or coaching provided by GLIM is not a commercial activity.”

(B) CASE of ICFAI

It will not be out of context to specify here that even prior to GLIM case, in the case of **ICFAI v CCE (2007) (CESTAT)** it was held that a society registered under Societies Registration Act 1860 is not liable as it is not ‘commercial’ coaching institute.

Inference on the basis of above cases:-

The deciding factor for levy of Service Tax under the category of “Commercial Training or Coaching Services” is the nature of concern providing these services and not the nature of services in itself.

Impact of Latest Circular:-

CBEC has recently issued **Circular No. 107/01/2009 dated 28-01-2009** in which a view opposite to above pronouncements has been expressed. According to this Circular many service providers contend that they are not liable to pay Service Tax under the category of “Commercial Training or Coaching Services” because their organizations are not commercial in nature. In other words, it is being contended that the institutes which are run by charitable trusts or on “no profit” basis do not fall within the purview of the phrase

“Commercial Training or Coaching Centre” and none of their activities would fall under the taxable service.

However in this regard, the Circular provides that according to Section 65(27) ‘Commercial Training or Coaching Centre’ means **any institute or establishment providing commercial training or coaching** for imparting skill or knowledge, or lessons on any subjects or field other than sports, with or without issuance of a certificate and includes coaching or tutorial classes but does not include pre-school coaching and training centre or any institute or establishment which issues any certificate or diploma or degree or any educational qualification recognized by law for the time being in force. Hence, the foregoing circular emphasizes that the above argument is clearly erroneous because as the phrase ‘Commercial Training or Coaching Centre’ has been statutorily defined, there is no scope to add or delete words while interpreting the same. It has been further specified in the Circular that the definition of “Commercial Training or Coaching Centre” has no mention that such institute must have ‘commercial(i.e. profit making) intent or motive. The word “Commercial” used in the phrase is with reference to the activity of training or coaching and not to the nature or activity of the institute providing the training or coaching. Thus, services provided by all institutes or establishments, which fulfill the requirements of the definition, are leviable to service tax.

The aforementioned clarification issued by the Department is also been supported by the latest decision of Hon’ble Delhi bench of CESTAT in the case of **Chaitanya Educational Committee V CCE, Jaipur – 2009 (13) STR 522.**

The brief facts of this case are as under:

Chaitanya Educational Committee was registered under Co-operative Societies Act. It was engaged in providing training & coaching for consideration to the students for getting admission in engineering institute. It sought the exemption from the levy of Service Tax on the following grounds:-

- (a) It is a charitable Institution.
- (b) It is registered as under co-operative Societies Act.

In order to further strengthen its case, it quoted the case of Great Lakes Institute of Management Ltd. v Commissioner -2008 (9) STR 560 (Tribunal).

Decision:-

Reliance of the appellants in the case of GLIM Case is not correct because it that GLIM was conducting post-graduate programme and executive MBA programmes in collaboration with foreign university. On the other hand in the present case the appellants are directly providing training and coaching on their own i.e. without collaboration with any university (Indian/Foreign).The ratio of GLIM case, is, therefore, not applicable in the present case.

In order to interpret any statute there are certain Rules. The first and foremost rule of interpretation is Rule of Literal Construction. It was held in **Bank of England V**

Vagliano (1891) AC 107, the proper course is in the first instance to examine the language of the Statute and to ask what is its natural meaning, uninfluenced by any considerations derived from the previous state of the law. The word of the enactment must have their natural effect given to them, as far as possible, for the construction of an Act depends primarily on its wording. A construction which requires for its support, additions or substitution of words, has to be avoided. In the present context, if the Rule of Literal Construction is applied in respect of statutory definition of ‘Commercial Training or Coaching Centre’ as given in Section 65 (27) of Act, it becomes quite clear that any institute or establishment providing commercial training or coaching can fall within the purview of ‘Commercial Training or Coaching Centre. It is not essential that service provider must be ‘commercial’ in nature. The term ‘any’ used is very wide and it certainly includes charitable or non-profit Centres.

In order to remove any kind of controversy regarding applicability of service tax in respect of Commercial Training or Coaching Services provided by Charitable/Not-for-Profit Educational Institutions, necessary changes should be made in Section 65(105)(zcc) & Section 65(27) of Act.

Applicability of Service Tax in case vocational training is being provided

As per the Notification No. 24/2004-ST dated 10.09.2004, Vocational Training Institute means a commercial training or coaching centre which provides vocational training or coaching that impart skills to enable the trainee to seek employment or undertake self-employment, directly after such training or coaching.

The term ‘vocational’ is of wide import, therefore before deciding upon whether a particular activity is covered under the term ‘vocational’ and hence exempt, one should also make a reference to its dictionary meaning.

Advanced Law Lexicon-3rd Edition, 2005

Vocation has been defined to include tailoring, hair cutting, washing clothes, typing, photocopying, repair work of any kind and other services of a similar nature. Other services of a similar nature would include vocations which are of the same as the one mentioned in the definition, that is to say, vocations which do not require any substantial intellectual input. Illustration of this would be persons earning their livelihood as carpenters, electricians, plumbers, painters, welders, machine operators, taxi drivers etc.

Webster’s New World Dictionary

Designating or of education training, a school etc. intended to prepare one for an occupation, sometimes specific in a trade.

Oxford Advanced Learner’s

Connected with the skills, knowledge etc. that you need to have in order to do a particular job.

Further, a word or expression can have many meanings. To find out the exact connotation a word in a statute, one must look to the context in which it is used. The context would often provide the key to the meaning of the word and the sense it should carry. Its setting would give colour to it and provide clue to the intention of the legislature in using it. [Manickam & Co. v State of Tamil Nadu, (1977)].

The usual canon of interpretation is that in construing statutes, words must be interpreted in their ordinary grammatical sense unless there be something in the context, or in the object of the statute to show that they were used in a specific sense. [CIT v Textile Knitting Industries Private Limited (1978)], [CIT v. G.D. Transport (1985)], [CIT v. Insaniyat Trust (1988)].

In this respect it is pertinent to mention that prior to Notification No. 24/2004, exemption was given to taxable services provided in relation to commercial training or coaching by Vocation training institute, computer training institute or recreation training institute. Notification No. 24/2004 was further amended by Notification No. 19/2005. Effect of such Notifications can be better understood with the help of following table:

S.No.	Date/Period	Notification No.	Particulars
1.	01.07.2003 to 29.02.2004	9/2003-ST dated 20.06.2003	Exemption to taxable services provided in relation to commercial training or coaching, by, - (a) vocation training institute; (b) a computer training institute; or (c) a recreational training institute upto 29.02.04.
2.	01.03.2004 to 30.06.2004	1/2004-ST dated 04.02.2004	Aforesaid exemption extended upto and inclusive of 30th day of June, 2004.
3.	01.07.2004 to 09.09.2004	-----	No such exemption during such period i.e. aforesaid services (under point 1) taxable under said category of service
4.	10.09.2004 onwards	24/2004-ST dated 10.09.2004	Exemption granted to vocational training institutes, or recreational training institute from whole of service tax extended without any time limit with effect from 10.09.2004
NOTE: No exemption has been granted to computer training institute by Notification No. 24/2004-ST. Thus taxable service provided by computer training institute in relation to commercial training or coaching continued to be taxable w.e.f. 01.07.2004 onwards.			
5.	Applicable w.e.f. 16.06.2005	19/2005-ST dated 07.06.2005	Clarified that service provided by computer training institute in relation to commercial training or coaching shall not be exempt, by adding relevant Proviso to Notification No. 24/2004. Further meaning of computer training institute defined.

Finally, in addition to list given hereinabove for the benefit of knowledgeable readers, following is the list of training or coaching services which are to be included or excluded in the category of Commercial Training Coaching Services on the basis of Circulars and latest judicial pronouncements issued on this matter:-

Services which fall within the ambit of these services:-

1. Commercial Training or Coaching Services in respect of any subject or field other than sports- as per provisions of Section 65(27)
2. Services in respect of Computer Training or Coaching Services in accordance with Notification No. 24/2004-ST dated 10-09-2004 as amended w.e.f. 16-06-2005 i.e. services in respect of vocational training.
3. Coaching imparted to students of classes 1 to 9.
4. Coaching in respect of Improving Communication Skills, Personality Development, How to be effective in Group Discussions or Personal Interviews, General Grooming & Finishing etc- as per Circular No.107/01/2009 dated 28-01-2009.

Services which do not fall within the purview of these Services:-

1. Commercial Training which forms an essential part of course leading to issue of a certificate/diploma/degree recognized by law for the time being in force in our country.
2. Recreational Training or Coaching such as Dance Classes, Singing Classes, Martial Arts Classes, Hobby Classes. It is worth mentioning here in FAST ARITHMATIC V CCE (2007) 8 STT 251 (CESTAT), the applicant was engaged in teaching basic mathematics by using 'abacus' to children in age group of 5-12 years. The purpose of teaching was fun and mental relaxation. It was held in this case that concerned teaching was not subject to levy of Service Tax. Further, same decision was given in case of K.K. ACADEMY V CST, 2008-(010)-STR - 0117 –TRIB dated 28-11-2007.
3. Training or Coaching in respect of Sports-on the basis of specific exclusion provided in Section 65(27)
4. Pre-school Training or Coaching-on the basis of specific exclusion provided in Section 65(27)
5. Courses which are conducted by private institutes in collaboration with certain institutes or universities and in respect of which diplomas/certificates/degrees are issued which are not specifically recognized by statutory authorities such as UGC, AICTE –as per Circular No. 107/01/2009 dated 28-01-2009.

Conclusion:-

The nature of services provided and not the nature of educational institute is to be kept in mind while deciding whether Service Tax is applicable in a given case under the heading “Commercial Training or Coaching Services.” Hence any kind of Commercial Training or Coaching Services provided or to be provided by any institute or establishment (including Charitable/Not for Profit Institutes/Establishments) are subject to levy of Service Tax.

However, it won't be inappropriate to state that Circulars are binding to Department and not to Assessee. In other words, in case a service provider feels aggrieved by the clarification issued by the Department then such service provider may litigate the matter on the basis of earlier favorable judicial pronouncements.
