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MATA, PITA, GURU, TAX !

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The budget has been very harsh on "commercial coaching and training centers". Levy of service tax on commercial coaching and training was introduced with effect from 01.07.2003. As per Section 65 (27) of the Finance Act, 1994, "commercial training or coaching centre" means any institute or establishment providing commercial training or coaching for imparting skill or knowledge or lessons on any subject or field other than the sports, with or without issuance of a certificate and includes coaching or tutorial classes but does not include preschool coaching and training centre or any institute or establishment which issues any certificate or diploma or degree or any educational qualification recognised by law for the time being in force.

Many such coaching centers are run under trust, without any profit motive and it was argued that such centers would not fall under "commercial" coaching and training center" and hence would not be liable to service tax.

The CBEC has issued a circular bearing No. 107/1/2009 Dated 28.01.2009, clarifying as below:

> *The first issue arises from the very name i.e. Commercial 'training or coaching center'. Many service providers argue that the word commercial appearing in the aforementioned phrase, suggests that to fall under this definition, the establishment or the institute must be commercial (i.e. having profit motive) in nature. It is argued that institutes which are run by charitable trusts or on no-profit basis would not fall within the phrase 'commercial training or coaching center' and none of their activities would fall under the taxable service. This argument is clearly erroneous. As the phrase 'commercial training or coaching center' has been defined in a statute, there is no scope to add or delete words while interpreting the same. The definition commercial training or coaching center has no mention that such institute must have 'commercial' (i.e. profit making) intent or motive. Therefore, there is no reason to give a restricted meaning to the phrase. Secondly, service tax, unlike direct taxes, is chargeable on the gross amount received towards the service charges, irrespective of whether the venture is 'profit making, loss making or charity oriented' in its motive or its outcome. 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 fulfills the requirements of definition, are leviable to service tax****.*

The above clarification is sought to be given statutory force in the Finance Bill, 2010 and the following explanation is sought to be inserted in Section 65 (105) (zzc) of the Act, with retrospective effect from 01.07.2003.

> Explanation.—For the removal of doubts, it is hereby declared that the expression "commercial training or coaching centre" occurring in this sub-clause and in clauses (26), (27) and (90a) shall include any centre or institute, by whatever name called, where training or coaching is imparted for consideration, whether or not such centre or institute is registered as a trust or a society or similar other organisation under any law for the time being in force and carrying on its activity with or without profit motive and the expression "commercial training or coaching" shall be construed accordingly.

As a result, all coaching / training centers (the prefix commercial is consciously omitted as it is rendered otiose) except those which issue degree / diploma recognised by law, would be liable to pay service tax.

Another blow to this sector, is that the scope of exemption available for "vocational training institutes" under Notification 24/2004 has been restricted and for this purpose, the earlier definition of the term "vocational training institute" has been substituted.

Earlier definition.

> *"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 selfemployment, directly after such training or coaching.*

Under the strength of the above definition it was being claimed that institutes imparting training in spoken English, other language training institutes, institutes providing training in personality development, etc. were also vocational training institutes, as they help the students in getting employment. But, the same CBEC circular referred supra, has already attempted to limit the scope of this exemption, in the following words.

> *The vocational training institutes are exempted from service tax vide Notification No. 24/2004-S.T., dated 10-9-2004 (as amended). By definition, such institutes should provide training or coaching that imparts skill to enable the trainee to seek employment or undertake self-employment, directly after such training or coaching. Disputes have arisen in respect of institutes that offer general course on improving communication skills, personality development, how to be effective in group discussions or personal interviews, general grooming and finishing etc. It is claimed that such training or coaching improves the job prospects of a candidate and therefore they are eligible for exemption as 'vocational training institutes'. However, a careful reading of the definition shows that the exemption is available only to such institutes that impart training to enable the trainee to seek employment or self-employment. The courses referred to above do not satisfy this condition because on their own such courses do not prepare a candidate to take up employment or self-employment directly after such training or coaching. They only improve the chances of success for a candidate who already has the required skill. Therefore, such institutes are not covered under the exemption.*

Now, more thrust has been given to the Government's resolve by substituting the definition of the term "vocational training institute", under Notification 24/2004.

> *vocational training institute" means an Industrial Training Institute or an Industrial Training Centre affiliated to the National Council for Vocational Training, offering courses in designated trades as notified under the Apprentices Act, 1961(52 of 1961).*

But, this amendment has not been made retrospective!

Before parting...

But, unfortunately, the following observations made by the Hon'ble High Court of Kerala in the case of Malappuram District Parallel College Association Vs UOI – 2006 (2) STR 321 has been lost sight of by the law makers.

> *The next question to be considered is whether the definition clause contained in Section 65(27) of the Act which makes the service rendered by the petitioners taxable under Section 66 (105)(zzc), is discriminatory and violative of Art. 14 of the Constitution of India. It is a settled position by series of decisions of the Supreme Court that taxing provisions should stand the test of constitutional validity with reference to Art. 14 of the Constitution of India also; see Federation of Hotel And Restaurant v. Union of India, (1989) 3 SCC 634 and East India Tobacco Co. Ltd. v. State of A.P., AIR 1962 SC 1733. In order to appreciate the challenge against levy of service tax as discriminatory and violative of Art. 14 of the Constitution of India, the effect of levy has to be gone into. Counsel for the petitioners rightly contended that there is no provision in the Act prohibiting collection of service tax and service-provider is therefore entitled to collect service tax which in this case is from the students. Even if prohibition is introduced against collection of service, fee has to be increased without which the heavy burden of 10% tax cannot be paid is the case of the petitioners. In either case, the burden of service tax on education falls on the student community. It is in this context that the validity of the provision has to be considered with reference to Art. 14 of the Constitution of India. As already stated students studying in the parallel colleges are students who are entitled to write the University examinations as private students.*

The curriculam prescribed for the examination and the degree certificate awarded to private students and students studying in regular colleges, whether aided or self-financed affiliated to University, are the same. Therefore there is no distinction between the two classes of students namely, the students studying in the colleges affiliated to Universities and private students who take coaching in parallel colleges to write the same examinations. While the students studying in affiliated colleges cannot be subjected to service tax along with tuition fees and other fees levied by the management of those colleges students, who are studying in parallel colleges will have to bear the service tax as an additional burden along with tuition fees and other charges collected by the management of parallel colleges. The main reason why many students cannot join regular colleges affiliated to Universities is economical. Further on account of limited number of seats available in the affiliated colleges, the less brillient will have to look for coaching elsewhere and they end up in parallel colleges. It is also a well-known fact that in interior and remote areas of the State, poor students even if eligible for admission in regular colleges cannot afford out-station-study and they naturally go to parallel colleges. In fact counsel for the petitioners pointed out that many brillient students who could not afford to go to regular colleges after study in parallel colleges have secured high ranks in the examinations conducted by the Universities. Therefore in most cases, students landing in parallel colleges are the less fortunate ones who are compelled to join parallel colleges for economic reasons. It is worthwhile to note that the State Government after appreciating these realities have granted the same concession in bus fare granted to regular college students, to students in parallel colleges also. Financial benefits are provided to students from SC and ST community studying in parallel colleges also. Therefore, the State Government also treats the students in affiliated colleges and parallel colleges as part of the same class. In any case there can be no distinction between students undergoing private study in the parallel colleges and those undergoing course study in the regular colleges, so long as the curriculam, the examinations written and the degrees obtained by them are one and the same. So far as the teaching staff rendering coaching rendered is concerned, it is common knowledge that appointments in private colleges whether aided or self-financed are made at the choice of the managements and not by relative merits of the applicants. In fact counsel for the petitioners rightly pointed out that those who start parallel colleges are mostly those who by virtue of their weak financial position are not able to secure jobs in regular colleges and they employ equally unfortunate ones as members of teaching staff. In other words, there may not be any qualitative difference in the coaching rendered in parallel colleges and in regular colleges. Even though counsel for the respondents submitted that by virtue of notification fixing the threshold limit of Rs. 4 lakhs-turnover for attracting service tax liability only big institutions are liable. I do not think any distinction can be drawn among parallel colleges based on turnover, because, the burden of service tax on the parallel colleges will have to be borne by the students, and the validity of charging section has to be tested against Art. 14 of the Constitution with reference to its effect on the beneficiaries, that is the students. In view of the findings above, I find no distinction between students undergoing private study in parallel colleges and those undergoing study in affiliated colleges whether aided or self-financed in the same subjects for writing the same examinations. Therefore levy of service tax for services rendered by parallel colleges which indirectly falls on the students, but by simultaneously providing exemption to regular affiliated colleges allowing the students therein study free of tax is patently discriminatory and violative of Art. 14 of the Constitution of India. Though the service tax is in the Union list, since education happens to be in the concurrent list and considering the encouraging policy of the State Government to improve the educational opportunities of the students in the State, wherefrom large number of educated people migrate outside the State and outside the country seeking employment, the view of the State Govt. was called for by this Court. After referring the matter to the Cabinet, the Under Secretary to Government has filed an affidavit in Court wherein he has stated that though the State is helpless in regard to levy of service tax, the Government decided to bring it to the notice of the Central Government the difficulties experienced by parallel colleges in the matter of service tax. In the circumstances, it has to be assumed that the State Government is also in favour of exemption to the parallel colleges in the same way granted to regular colleges under the exemption in the definition clause. In view of the above findings, I hold that the impugned provisions of the Act authorising levy of service tax on parallel colleges are arbitrary and violative of Art. 14 of the Constitution of India.