# CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
# CHANDIGARH

REGIONAL BENCH - COURT NO. I

## Service Tax Appeal No. 3737 of 2012

[Arising out of Order-in-Appeal No. 182/ST/Appeal/CHD-II/2012 dated 19.07.2012 passed by the Commissioner (Appeals), Central Excise, Chandigarh-II]

**M/s Benipal Computers** **……Appellant**
Chandigarh Road, Samrala,
C/o Mrs Swaranjit Kaur W/o Sh. Jasbir Singh,
Vill. Badesha, P.O. Mandian,
Teh Maler Kotla, Sangur,
Punjab

*VERSUS*

**Commissioner of Central Excise & Service Tax, Chandigarh-II** **……Respondent**
Plot No. 19, C R Building
Sector 17-C,
Chandigarh 160017

**APPEARANCE:**

Present for the Appellant: Sh. Om Parkash, Advocate

Present for the Respondent: Sh. Aneesh Dewan and Sh. Harish Kapoor, Authorized Representatives

**CORAM:**

**HON'BLE Sh. S. S. GARG, MEMBER (JUDICIAL)**
**HON'BLE Sh. P. ANJANI KUMAR, MEMBER (TECHNICAL)**

**FINAL ORDER NO. 60472/2024**

DATE OF HEARING: 31.07.2024
DATE OF DECISION: 09.08.2024

**PER : S. S. GARG**

The present appeal is directed against the impugned order dated 19.07.2012 passed by the Commissioner (Appeals), whereby the learned Commissioner (Appeals) has confirmed the demand of

service tax amounting to Rs.25,720/- along with interest under Section 75 of the Finance Act, 1994 (hereafter in short 'Act'); the learned Commissioner (Appeals) has also imposed penalty of Rs.1,000/- under Section 77 for non-filing of ST-3 Returns for the half year ending in September, 2008 and equivalent penalty under Section 78 of the Act.

2. Briefly stated facts of the present case are that the appellant was registered with the Service Tax department w.e.f. 04.11.2008 for providing "Commercial Training or Coaching Services". The appellant was providing services as a franchise of M/s Shokeenda Electro Ltd, 5A, Pitampura, New Delhi (in short 'SEL'). The appellant Mrs. Swarnjit Kaur w/o Sh. Jasbir Singh was the proprietor of the computer centre. SEL had appointed the appellant as franchisee at Samrala in May 2008. As per the agreement with SEL, the appellant was giving 20% of the total fees collected from the students as a franchise free/royalty to SEL. The appellant had filed ST-3 returns for the period ending March 2009 & September 2009 and had already deposited service tax amounting to Rs.41,987/-. A show cause notice dated 23.02.2010 was issued to the appellant demanding service tax of Rs.1,31,758/- along with interest for the services provided during the period April 2008 to August 2009. After following the due process, the Deputy Commissioner vide O-I-O dated 28.02.2011 confirmed the demand of service tax amounting to Rs.1,31,758/- along with interest and imposed penalties under Section 77 and Section 78 of the Act. Aggrieved by the said order, the appellant filed

appeal before the Commissioner (Appeals) who vide the impugned order has reduced the demand of service tax from Rs.1,31,758/- to Rs.25,720/- along with interest; penalty of Rs.1000/- under Section 77 and penalty of Rs.25,720/- under Section 78 were also imposed. Hence, the present appeal.

3. Heard both the parties and perused the material on record.

4.1 The learned Counsel for the appellant submits that the impugned order is not sustainable in law as the same has been passed without properly appreciating the facts and the law.

4.2 He further submits that from the gross receipts, the appellant had paid the amount of Rs.2,13,200/- as a franchise free/royalty along with 12.36% as service tax as per the agreement and the invoices of SEL.

4.3 He further submits that the entire service tax for which the demand has been confirmed stands paid to SEL as per their invoices and no demand persists against the appellant and if the demand is confirmed, it will amount to double taxation on the amount which has been remitted to franchisor along with service tax. Alternatively, he has submitted that the appellant is eligible for Cenvat Credit of the amount of service tax paid on the amount of franchise free/royalty which will neutralize the demand payable by the appellant.

4.4 Further, he submits that penalty has wrongly been imposed under Section 78 of the Act whereas the appellant has filed the ST-3

Returns and has paid the service tax on the royalty amount paid to the franchisor.

5. On the other hand, the learned AR for the Revenue reiterates the findings of the impugned order and further submits that in the impugned order, the Commissioner (Appeals) has categorically held that for leviability of service tax, as per provisions of Section 67 of the Act, which provides *'that the value of taxable service shall be the gross amount charged by the service provider for such services rendered by him.'* He further submits that the appellant is liable to pay service tax on the gross amount of Rs.6,15,495/- collected by them and no deduction on account of royalty of Rs.2,13,200/- paid to SEL is available to them. In support of his submission, he relies on the decision of the Tribunal in the case of ***Saraswati Shiksha Kendra vs. CCE, Ludhiana – 2008 (11) STR 52 (Tri. Del.)***.

6. After considering the submissions made by both the parties and perusal of the material on record, we find that the only question involved in the present case is the valuation of services rendered by the appellant under Section 67 of the Act. The sub-section 1(i) of Section 67 provides that **in case where the provision of service is for a consideration in money, the service tax chargeable on any taxable service with reference to its value, shall be the gross amount charged by the service provider for such service provided or to be provided by him**. In view of the provisions of Section 67, it is clear that the appellant is liable to pay service tax on the gross amount of Rs.6,15,495/- collected by the appellant and no

deduction on account of royalty of Rs.2,13,200/- paid to SEL is available to them. In this regard, we may refer to the decision in the case of ***Saraswati Shiksha Kendra*** (supra), wherein the Tribunal on the identical facts, has observed in para 3 as under:

> ***"3.*** *In the present case we are concerned with the extent of liability of the appellant and on a prima facie consideration, we are of the opinion that the appellant is liable to pay Service tax on the entire amount collected from the students. It was submitted that the money received from the students is deposited in a joint account in the names of M/s. Saraswati Shiksha Kendra i.e the appellant herein and Career Point Infosystems Ltd., but in our view, as the service is provided by the appellant and it is the appellant which is collecting the amount, 100% liability is on the appellant and thus we do not find any error in the adjudication order."*

7. The submission of the learned Counsel that the extended period of limitation has wrongly been invoked, is also not sustainable because the period involved in the present case is April 2008 to September 2009 and show cause notice was issued on 23.02.2010, hence, entire demand is within limitation.

8. Further, we also find that the appellant had a *bona fide* belief that they are liable to pay service tax only on the amount retained by them i.e. 80% of the gross receipts and they are not liable to pay service tax on 20% of the total fees collected from the students. Since the appellant have been filing the ST Returns except for the

period of half year ending in September, 2008, in view of this, penalty imposed under Section 78 is not justified.

9. In view of our above discussion, we uphold the impugned order to the extent of demand of service tax to the tune of Rs.25,720/- along with interest and penalty of Rs.1000/- under Section 77, but drop the penalty under Section 78 of the Act.

10. In result, the appeal is disposed of in above terms.

(Order pronounced in the court on 09.08.2024)

**(S. S. GARG)**
**MEMBER (JUDICIAL)**

**(P. ANJANI KUMAR)**
**MEMBER (TECHNICAL)**

RA_Saifi