

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL**

**NEW DELHI**

PRINCIPAL BENCH- COURT NO. I

**Service Tax Appeal No. 50711 of 2017**

(Arising out of Order-in-Appeal No. BHO-EXCUS-001-APP-570-16-17 dated 11.01.2017 passed by Commissioner (Appeals-I) Customs, Central Excise Tax, Bhopal, M.P.)

**M/s Hindustan Institute of Aeronautics**

**...Appellant**

52, Sri Kunj  
Budha Colony, Patna- 800001

Versus

**Commissioner of Central Excise  
& Service Tax Bhopal**

**...Respondent**

48, Administrative Area,  
Arera Hills, Hoshangabad Road, Bhopal

**APPEARANCE:**

None for the Appellant

Ms. Jaya Kumari, Authorized Representative for the Department

**CORAM:**

**HON'BLE MR. JUSTICE DILIP GUPTA, PRESIDENT**

**HON'BLE MR. P.V. SUBBA RAO, MEMBER (TECHNICAL)**

**DATE OF HEARING/DECISION: August 07, 2024**

**FINAL ORDER NO. 58003/2024**

**JUSTICE DILIP GUPTA:**

**M/s Hindustan Institute of Aeronautics<sup>1</sup>** has sought quashing of the order dated 11.01.2017 passed by the Commissioner (Appeals) by which the order dated 08.06.2017 passed by the Assistant Commissioner confirming the demand of service tax with interest and penalty has been upheld. The appellant provided training and prepared students for examination conducted by the Director General of Civil Aviation for aircraft

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**1. the appellant**

maintenance engineering license. After completion of the training, the appellant issued certificates to the students.

2. Two show cause notices dated 07.03.2014 and 20.03.2015 were issued to the appellant alleged calling upon the appellant to pay service tax on the fee receipt and job training. The appellant filed a reply to the show cause notice, but by order dated 08.06.2015, the Assistant Commissioner confirmed the demand of service tax.

3. Before the Assistant Commissioner, the appellant placed reliance upon the decision of the Delhi High Court in **Indian Institute of Aircraft Engineering vs. Union of India**<sup>2</sup> and the decision of the Tribunal in **Hindustan Institute of Aeronautics Vs. Commr. Of C. Ex., Bhopal**<sup>3</sup> in the own case of the appellant. The observations made by the Assistant Commissioner in regard to the order passed by the Tribunal and the Delhi High Court are as follows:

**"6.3 The CESTAT, in its Final Order dated 31.03.2014, has failed to take cognizance of the fact that the respondent are only providing the training for preparing students to take the AME examination of the DGCA and are not issuing any Certificate/Diploma/Degree at all, let alone any of these recognized by law. As they have charged fees from their students for preparation and training as per syllabus prescribed by DGCA they do not fall in the excluded category of Coaching or Training Centers, and hence are liable to Service Tax provisions including payment of Tax.**

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2. 2013 (30) S.T.R. 689 (Del.)

3. 2015 (2) TMI 140- CESTAT NEW DELHI

**6.4 The Delhi High Court judgment that has been relied upon by CESTAT in passing the instant Final Order dated 31.03.2014, has not applied the correct interpretation to the wordings in the statute, which are reproduced below:"**

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4. In fact, the Assistant Commissioner proceeded to rely upon the views expressed by the Advanced Ruling Authority. The relevant observations are as follows:

"8.5 The above ruling of the AAR has direct implication for the case before us. It is true that the decision of the AAR is binding only to the parties involved in that ruling. But when the facts involved are similar and the question for decision is identical, due to consideration needs to be given to the said ruling especially considering the fact the AAR is presided by a Retired Judge of the hon'ble apex court and the other members of the authority are erstwhile members of the Central Board of Excise & Customs and Central Board of Direct Taxes. Thus the status of AAR is higher than that of this Tribunal and therefore, I cannot ignore the ruling by the AAR in a case where the facts are similar/identical and the questions of law are identical.

8.6 The judgment of the Hon'ble Tribunal on identical issue in the case of M/s Institute of Aeronautics and Engineering, Bhopal Vs. CCE, Bhopal vide final order no. ST/A/51353/2013-CU(DB) dated 31.03.2014/04.04.2014 has not been accepted by the department and an appeal has been filed before the Hon'ble High Court of Madhya Pradesh, Principal Bench at Jabalpur(M.P.)"

5. Feeling aggrieved, the appellant filed an appeal before the Commissioner (Appeals) who dismissed the appeal after holding that there was no infirmity in the order by the Assistant Commissioner.

6. Learned counsel for the appellant submitted that the Assistant Commissioner and the Commissioner (Appeals) committed an illegality in not following the order passed by the Tribunal and, therefore, the order passed by the Commissioner (Appeals) should be set aside. The relevant portion of the order in **Hindustan Institute of Aeronautics** passed by the Tribunal is reproduced below:

"2. Proceedings were initiated vide a show cause notice dated 14-2-2007 alleging that the assessee had conducted training programmes to impart and promote Advancement and diffusion of knowledge in the field of Aerospace, Aviation Science, Aircraft engineering, technology and evaluation of Aeronautical Profession; had collected fee for the courses from students; had enrolled students charging fee of ₹ 38,000 (PA) and ₹ 8,000 (per semester) for AME Licence Course (3 years course) and for graduation courses; and that these activities amount to commercial coaching or training, a taxable service. Another activity, which was assessed to service tax under the same taxable category is in respect of a study centre for providing a course of instruction for B. Tech (AME) and other courses, on behalf of Janaardan Rai Nagar Rajasthan Vidapeeth, Udaipur, Rajasthan, a deemed University. Engineering and other degrees are awarded by the said University and the appellant functions as a study centre for that University. For this providing this service, the appellant collected fees. Neither the show cause notice nor the preliminary and appellate orders compute the tax liability in respect of the two

activities which were assessed to the liability to service tax separately.

**3. The Delhi High Court in Indian Institute of Aircraft Engineering v. Union of India reported in 2013 (30) S.T.R. 689 (Del.) has declared that aircraft maintenance engineering training, a course approved by the DGCA and imparted by aircraft Training Institutes does not fall within the ambit of "commercial coaching or training"; and no taxable service is thus provided.** In the light of this decision, the liability of the petitioner assessed by the main adjudication order, as confirmed by the Commissioner (Appeals), is to that extent unsustainable and is declared inoperative.

4. The service tax due and assessable on the consideration received towards fees on the appellant providing a study centre for the Janaardan Rai Nagar Rajasthan Vidapeeth, Udaipur, Rajasthan, is however taxable as "commercial coaching or training" service, but has not been separately determined. We therefore remit the matter to the Additional Commissioner, Central Excise, Bhopal for computation of the tax liability on the consideration received on operation of the study centre."

**(emphasis supplied)**

7. The Assistant Commissioner and the Commissioner (Appeals) were therefore, not justified in ignoring the order passed by the Tribunal in the own case of the appellant as also the order of the Delhi High Court in the case of the appellant.

8. In view of the decision of the Delhi High Court in **Indian Institute of Aircraft Engineering** and the Tribunal in **Hindustan Institute of Aeronautics** it is not possible to sustain the order dated 11.01.2017 passed by the Commissioner (Appeals). It is, accordingly, set aside and the appeal is allowed.

(Order dictated in the Open Court)

**(JUSTICE DILIP GUPTA)**  
**PRESIDENT**

**(P.V. SUBBA RAO)**  
**MEMBER (TECHNICAL)**

Kritika