



OFFICE OF THE PRINCIPAL COMMISSIONER OF C. G. S. T.,
AHMEDABAD – SOUTH.

प्रधान आयुक्त का कार्यालय, के. व. से. क., अहमदाबाद दक्षिण
G. S. T. BHAVAN, AMBAWADI, AHMEDABAD – 380 015
व. से. क. भवन, आम्बावाडी, अहमदाबाद – ३८० ०१५

फा.सं. F. No. : STC/04-33/Endeavour /O&A/2019-20
DIN No. : 20220664WS0000333CD8

आदेश की तारीख: Date of Order : 29.06.2022
जारी करने की तारीख: Date of Issue 29.09.2022

द्वारा पारित / Passed by: **Shri Nalin Bilochan, JOINT COMMISSIONER**

मूल आदेश सं./Order-In-Original No. 08/CGST/Ahmd-South/JC/NB/2022-23

यह प्रति उस व्यक्ति (यों) को, जिसके (जिनके) लिए यह आदेश जारी किया गया है, उसके (उनके) व्यक्तिगत उपयोग के लिए निःशुल्क प्रदान की जाती है।

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यदि कोई व्यक्ति इस आदेश से स्वयं को असंतुष्ट अनुभव करता है, तो वह इस आदेश के विरुद्ध आयुक्त (अपील), केन्द्रीय जीएसटी, केन्द्रीय जीएसटी भवन, आम्बावाडी, अहमदाबाद-15 को प्रारूप इ.ए.-1 में अपील कर सकता है। उक्त अपील पत्रकार पर आदेश तामील होने अथवा अथवा उसे डाक द्वारा प्राप्त करने की तारीख से दो माह के भीतर दाखिल की जानी चाहिए। इसपर रुपए 2.00/- केवल का न्यायालय शुल्क टिकट लगा होना चाहिए।

Any person deeming himself aggrieved by this Order may appeal against this order in Form E.A.1 to Commissioner (Appeals), Central GST, Central GST Bhavan, Near Government Polytechnic, Ambawadi, Ahmedabad -15 within sixty days from date of its communication. The appeal should bear a court fee stamp of Rs.2.00/- only.

उक्त अपील दो प्रतियों में प्रारूप सं. इ.ए.-1 में दाखिल की जानी चाहिए। इसपर केन्द्रीय उत्पाद शुल्क (अपील) नियमावली, 2001 के नियम 3 के उपबंधों के अनुसार अपीलकर्ताओं जद्वारा हस्ताक्षर किए जाने चाहिए। इसकेसाथ निम्नलिखित को संलग्न किया जाए:

The Appeal should be filed in form No. E.A.-1 in duplicate. It should be filed by the appellants in accordance with provisions of Rule 3 of the Central Excise (Appeals) Rules, 2001. It shall be accompanied with the following:

उक्त अपील की प्रति।

Copy of the aforesaid Appeal.

निर्णय की दो प्रतियाँ (उसमें से एक उस आदेश की प्रमाणित प्रतिलिपि होनी चाहिए जिसके विरुद्ध अपील की गई है) अथवा उक्त आदेश की अन्य प्रति जिसपर रु 2.00/- का न्यायालय शुल्क टिकट अवश्य लगा होना चाहिए।

Copies of the Decision (one of which at least shall be certified copy of the order appealed against) or copy of the said Order bearing a court fee stamp of Rs. 2.00/-.

इस आदेश के विरुद्ध आयुक्त(अपील) में शुल्क के 7.5% जहां शुल्क एवं जुर्माना का विवाद है अथवा जुर्माना जहां सिर्फ जुर्माना के बारे में विवाद है उसका भुक्तान करके अपील की जा सकती है।

An appeal against this order shall lie before the Commissioner (Appeal) on payment of 7.5% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute."

संदर्भ/Reference : कारण बताओ सूचना / Show Cause Notice सं. / No. STC/04-33/Endeavour/O&A/2019-20 dated 13.05.2020 issued to **M/s Endeavour Careers Pvt Ltd**, 101, Suyojan Towers, Near Hotel President, Off C.G Road, Ahmedabad-380 009.

Brief facts of the case: M/s. Endeavor Careers Pvt. Ltd., 101, Suyojan Towers, Near Hotel President, Off C. G. Road, Ahmedabad - 380 009 ("the assessee" for short) were engaged in providing taxable services of "Commercial Training and Coaching service" which do not fall under the Negative list of services under Section 66D of Finance Act, 1994. They were registered with Service tax Commissionerate having Service Tax Registration No. AABCE4808NST001.

2. Whereas during the CERA audit, on scrutiny of Service Tax records of the assessee, the following HM No. 07, 08, 09, 10 and 11 were issued. The details of objection raised in the above HMs are as follows :-

HM No. 07: Non- Payment of Interest

2.1 During test check of service tax records for the year 2013-14 to 2015-16, it was noticed that the assessee has discharged Service Tax liability delayed by 44 days to 503 days out of which they made payment in some cases in 2013-14. However, interest amounting to Rs. **42,85,449/-** was not paid as shown in the statement attached to the HM No. CERA-I/SSCA-CTCC/AR-I/HM-07 dated 13.12.2016 issued by CERA. As per Section 75 of the Finance Act, 1994 read with Notification No. 12/2014-ST dated 11.07.2014, every person liable to pay the tax in accordance with the provisions of Section 68 of the said Act, or rules made there under, who fails to credit the tax or any part thereof to the account of Central Government within the period prescribed, shall pay simple interest at the prescribed rate @ 18% up to Six months, @ 24% from six months and upto one year and @30% for more than one year) for the period by which such credit of the tax or any part thereof is delayed.

HM No. 08: Non- Payment of penalty on late filing of ST-3 Returns

2.2 During test check of service tax records e.g. ST-3 returns etc for the year 2013-14 to 2015-16, it was noticed that the assessee has submitted ST-3 returns delayed between 117 to 575 days and they have not paid penalty for late payment. This has resulted in non-payment of penalty amounting to Rs 1,04,300/- as shown below:

Year	Half	Due date of submission	Submitted on	Delay in days	Penalty upto 30 days	Penalty beyond 30 days Rs.	Restricted upto Rs. 20,000/-
2013-14	I	25.10.2013	23.05.2015	575	1000	56500	20000
	II	25.04.2014	13.07.2015	444	1000	43400	20000
2014-15	I	25.10.2014	17.08.2015	296	1000	28600	20000
	II	25.04.2015	20.08.2015	117	1000	10700	10700
2015-16	I	25.10.2015	19.04.2016	177	1000	16700	16700
	II	25.04.2016	21.10.2016	179	1000	16900	16900
						Total	104300

(Source: HM No. CERA-I/SSCA-CTCC/AR-I/HM-08 dated: 13.12.2016 issued by CERA)

2.2.1 As per Rule (7) C of Service Tax Rules, 1994, where the returns prescribed under Rule 7 is furnished after the date prescribed for submission of such returns, the person liable to furnish the said return shall pay to the credit of the Central Government, for the period of delay of

- (i) Fifteen Days from the date prescribed for submission of such returns, an amount of five hundred rupees;
- (ii) Beyond fifteen days but not later than thirty days from the date prescribed for submission of such return, an amount of one thousand rupees; and
- (iii) Beyond thirty days from the date prescribed for submission of such return, an amount of one thousand rupees plus one hundred rupees per day from the thirty first day till the date of furnishing the said return;

Provided that the total amount payable in terms of this rule shall not exceed the amount specified in Section 70 of the Finance Act, 1994, as amended. This amount of penalty has been increased to Rs. 20,000/- w.e.f 01.04.2011 under Section 70(1) of the Finance Act, 1994.

Provided also that where the gross amount of Service Tax payable is Nil, the Central Excise Officer may, on being satisfied that, there is sufficient reason for not filing the return, reduce or waive the penalty.

HM No. 09: Non- Payment of Service Tax

2.3 During test check of service tax records for the year 2013-14 to 2015-16, it was noticed that the assessee has provided the training for examination for CRAT (Campus Recruitment Aptitude Test) to the students of M/s Atmiya Institute of Technology and Science, Rajkot in 2014-15 and charged Rs. 10,50,000/- The aim for provision of such service was to train the students for facing various examinations conducted for CRAT. It was one kind of training and fall under the definition of "Commercial Training or Coaching Service". The assessee has not paid service tax of Rs. 1,29,780/- considering it as exempted service falling under Notification No. 6/2014-ST. The said Notification exempts the service only if conduct of examination is by such institute. In the instant case, it has provided the training to face the examination of CRAT and hence, it was taxable. Interest is also leviable under Section 75 of the Finance Act, 1994, as amended. Vide Sr. no. 9 of notification No. 25/2012-ST dated 20 June 2012 as amended vide notification No. 6/2014-ST dated 11 July 2014, services are exempted if provided, - (a) by an educational institution to its students, faculty and staff; (b) to an educational institution, by way of, - (i) transportation of students, faculty and staff; (ii) catering, including any mid-day meals scheme sponsored by the Government; (iii) security or cleaning or house-keeping services performed in such educational institution; (iv) services relating to admission to, or conduct of examination by, such institution. However the assessee has provided the training for examination for CRAT (Campus Recruitment Aptitude Test) and it was not related to conduct of examination by such institute.

HM No. 10: Non-Payment of Service Tax on Reverse charge Mechanism

2.4 During test check of service tax records for the year 2013-14 to 2015-16, it was noticed that the assessee has paid Rs. 2,45,647/- to M/s LinkedIn Ireland, a firm having it's office at Ireland for educational information related service. In the instant case, Service provider has no office in India and the place of Service recipient was taxable territory and

hence, the assessee is liable to pay Service tax amounting to Rs. 33,144/- as under:

Period	Amt. of Service Provided (Rs.)	Service Tax leviable @ 12.36% (S.T.+ Edu. Cess+HSEC) (Rs.)	Service Tax leviable @ 14% (Rs.)	Service Tax leviable @ 14.5% (S.T. + Swatchh Bharat Cess) (Rs.)	Total Service Tax leviable (Rs.)
April 2013 to June 2015	77944	9353+187+94 =9634			9634
July 2015 to December 2015	121403		16996		16996
Jan 2016 to March 2016	46300			6482+32 =6514	6514
Total					33144

(Source: HM No. CERA-I/SSCA-CTCC/AR-I/HM-10 dated: 13.12.2016 issued by CERA)

2.4.1 As per Taxation of services (provided from outside India and received in India) Rules, 2006 inserted vide Notification No. 11/2006 dated 19.04.2006, it is stipulated that the Service tax is to be levied on services mentioned under Section 66A of Chapter V of the Finance Act, 1994. Moreover, as per the Rule 2(1)(d)(iv), in relation to any taxable service provided or to be provided by any person from a country other than India and received by any person in India under section 66A, the recipient of such service is liable to pay the service tax. Moreover, Rule 3 of Place of Provision Services Rule, 2012, states, the place of provision of Services is the location of Service recipient. Therefore, service tax was leviable under Section 66A of the Finance Act, 1994.

HM No. 11: Non-Payment of Service Tax

2.5 During test check of service tax records for the year 2013-14 to 2015-16, it was noticed that the assessee was providing **commercial** training or coaching services to its students. The assessee also supplied

reference materials/ study materials to the students during the course of rendering such service but they were not paying Service Tax on the amounts received from the students towards the cost of reference materials/ study materials. The assessee received amounts towards the cost of reference materials/ study materials through its subsidiary company M/s Endeavour Publishing Company Pvt. Ltd. As ascertained from the financial statements of its subsidiary company namely M/s Endeavour Publishing Co. Pvt. Ltd. for the period of 2013-14 to 2015-16, as received from the assessee, it was found that the total cost of reference material/ study materials realized from the student during the course of rendering of service of Commercial Training or Coaching Service was Rs. 10,62,49,131/- on which no Service Tax was paid by the assessee. This resulted in Non-payment of Service Tax amounting to Rs. 1,23,92,929/- by the assessee which was required to be recovered along with interest, as under:

Period	Gross amount collected towards reference materials/Study materials including ST (Rs.)	Rate of ST	Value of Service excluding ST (Rs.)	ST Payable(Rs.)
2013-14	3,14,20,208	12.36	2,79,63,873	34,56,335
2014-15	3,24,37,063	12.36	2,88,68,871	35,68,192
2015-16	4,23,91,860	14.50	3,70,23,459	53,68,402
Total	10,62,49,131		9,38,56,203	1,23,92,929

(Source: HM No. CERA-I/SSCA-CTCC/AR-I/HM-11 dated: 15.12.2016 issued by CERA)

2.5.1 Whereas Clause (2) and (3) of Section 66F of the Finance Act, 1994, effective with effect from 01.07.2012, stipulated that -

- (1) Where a service is capable of differential treatment for any purpose based on its description, the most specific description shall be preferred over a more general description.
- (2) Subject to the provisions of sub-section (2), the taxability of a bundled service shall be determined in the following manner, namely:-
 - (a) if various elements of such service are naturally bundled in the ordinary course of business, it shall be treated as provision of

the single service which gives such bundles its essential character;

- (b) if various elements of such service are not naturally bundled in the ordinary course of business, it shall be treated as provision of the single service which results in the highest liability of service tax.

Explanation below Section 66F *ibid* defines bundled service as a bundle of provisions of various services wherein an element of provision of one service is combined with an element or elements of provision of any other service or services.

2.5.2 The assessee were a registered service provider of commercial training or coaching services through various coaching centres. Some of the coaching centres are run by the assessee themselves while some of the centres are run by the franchises appointed by them under respective subcontract agreements. On scrutiny of a sample subcontract agreement entered into by the assessee with M/s Rukmat Consulting, Plot No. 1857, Mahatab Road, Old Town, Bhubaneswar, Kist. Khurda, Odisha-751002, it was found that the assessee was interested in operating the full-fledged coaching centre at Bhubaneswar and M/s Rukmat Consulting was interested to build, maintain and operate the centre on subcontract basis under the overall guidance and supervision of the assessee. Accordingly, the assessee appointed the aforesaid subcontractor for operating the centre at Bhubaneswar subject to conditions prescribed in the concerned subcontract agreement. As per the terms and conditions of the agreement-

- i) the assessee was having the right of overall supervision over the functioning of the centre and take corrective actions, if required;
- ii) design of the curriculum and teaching methods, reference material, faculty training, timing of launch of batches, design of fees structure, marketing and branding etc. was within the scope of the assessee;
- iii) the principal was solely responsible for the content of the course material supplied to the student;
- iv) in the case of any defect, mistake or otherwise, in the course material supplied to the student, the same was to be rectified at the cost of the assessee;
- v) the subcontractor could not develop/ provide any additional material to student without approval from principal;

- vi) all cheques collected by the subcontractor in respect of coaching was to be drawn in the name of assessee only;
- vii) all receipts issued by the subcontractor was to be transferred to the assessee at the end of the week;
- viii) the relationship between the assessee and the sub-contractor was solely of Principal-Agent for the limited purpose of center operation; and
- ix) the subcontractor was not having any authority in deciding fee structure.

2.5.3 Thus, assessee were providing commercial training or coaching services to its students which included supply of reference materials/ study materials to the students during the course of rendering such service. On scrutiny by CERA, of records of the receipts received by the assessee from its various subcontractors, which were being issued in the name of assessee only, it was found that the receipts so issued were, inter alia, consisting of three essential components-

- 1) Total amount- It represented the total amount to be received towards the Net coaching fees including service tax.
- 2) Received- It represented the amount for which the instant receipts were issued.
- 3) Fees Due- It represented the Gross amount to be charged from the student towards the provision of service including reference material.

2.5.4 On further scrutiny by CERA, of these receipts so issued, it was found that the amount to be charged towards the coaching fees as shown under the column 'Total Amount' was less than the gross amount charged from the students as shown in the column 'Fees Due'. On reconciliation of receipts issued to the students and the amount charged from them, it was found that the differential cost as representing the difference between the 'Fees Due' and the 'Total Amount' was actually the cost of reference materials/ Study materials supplied to the students during the course of rendering the service of commercial training or coaching. However, it was found that contradictory to the provision of the subcontracting agreements, the receipts towards the cost of reference materials/ study materials were being issued by the sub-contractors of the assessee in the name of its subsidiary company M/s Endeavour Publishing

Company Pvt. Ltd. and not in the name of the assessee itself. Not only this, but the amount so realized towards the reference materials/ study materials were not forming part of the books of accounts of the assessee in a bid to show that the assessee had nothing to do with the supply of reference materials/ study materials to the students, while it is very much clear from the subcontracting agreement of the assessee with its various subcontractors, that the design of the curriculum and teaching methods, reference material and the contents thereof etc. was within the scope of the assessee. Also, the supply of reference materials/ study materials was specifically excluded from the scope of the subcontractors. Thus, the provision of supply of reference materials/ Study materials was made during the course of provision of main service i.e. commercial training or coaching service. Thus, the provision of supply of reference materials/ Study materials is naturally bundled with the provision of commercial training or coaching service and its essential character is to impart training. Accordingly, the supply of reference materials/ Study materials and the provision of commercial coaching is to be treated as single service of commercial training or coaching service in view of the provisions of Section 66(F)(2) of the Finance Act, 1994 *ibid*. Thus, the cost of reference materials/ Study materials was to be included in the value of service and it was liable to Service Tax. As seen from Annual Return filed by the assessee with the ROC (Registrar of Companies) for the year 2015-16, it is mentioned in para III, that M/s Endeavor Publishing Company Pvt. Ltd. is a subsidiary company of the assessee company. The same facts are corroborated by the Annual Return filed by M/s Endeavor Publishing Company Pvt. Ltd. with the ROC (Registrar of Companies) for the year 2015-16, it is mentioned in para III, that M/s Endeavor Career Pvt. Ltd. (the said assessee) is holding company of M/s Endeavor Publishing Company Pvt. Ltd. Therefore, it appeared that the total Service Tax liability for the said assessee during the period 2013-14 to 2015-16 amounted to **Rs 1,23,92,929/-** for non-payment of Service Tax in this manner.

3. As provided under Section 68(1) of the Act, 'every person providing taxable service to any person shall pay Service tax at the rate prescribed in Section 66 in such manner and within such period which is prescribed under Rule 6 of the erstwhile Service Tax Rules, 1994. In the instant case, it appeared the assessee had not paid service tax amounting to **Rs 1,25,55,853/-** (Rs 1,23,92,929/- for non-payment of Service Tax on the amount received in the name of reference/study material + Rs. 33,144/-



for non-payment of Service Tax on the import of services under reverse charge method + Rs. 1,29,780/- for non-payment of Service Tax on the amount received towards the training for examination for CRAT (Campus Recruitment Aptitude Test) to the students of M/s Atmiya Institute of Technology and Science, Rajkot during 2014-15) and thereby, it appeared that they have violated the provisions of Section 68(1) read with rule 6 of the erstwhile Service Tax Rules, 1994.

4. Further, as per Section 75 of the Finance Act, 1994, every person liable to pay the tax in accordance with the provisions of Section 68, or the rules made there under, who fails to credit the tax or any part thereof, to the account of the Central Government within the prescribed period, is liable to pay interest at the applicable rate. Since, the said assessee has failed to pay their Service Tax liabilities in the prescribed time limit, it appeared they are liable to pay the said amount along with interest. Thus, the Service Tax not paid is required to be recovered from the said assessee along with interest under Section 75 of the Finance Act, 1994.

5. As per Section 70 of the Finance Act, 1994, every person liable to pay service tax is required to himself assess the tax due on the services provided/ received by him and thereafter, furnish a return to the jurisdictional Superintendent of Service Tax by disclosing wholly & truly all material facts in their Service tax returns (ST-3 Returns). The form, manner and frequency of return are prescribed under Rule 7 of the erstwhile Service Tax Rules, 1994. In this case, it appeared that the said service provider has not assessed the tax due, properly on the services provided by him as discussed above and failed to file ST-3 Returns, and thereby violated the provisions of Section 70(1) of the Act, read with Rule 7 of erstwhile Service Tax Rules, 1994.

6. It further appeared that on account of all the above narrated acts of commission and omissions on the part of the said assessee, they have rendered themselves liable to penalty under Section 77(2) of Finance Act, 1994, in as much as they failed to self-assess the tax due properly on the services provided and not filed the ST-3 return in time.

7. As provided under Section 73(1) of the erstwhile Finance Act, 1994, where any service tax has not been levied or paid or has been short-levied or short-paid or erroneously refunded, the Central Excise Officer may,



within 'eighteen months' from the relevant date, or in the case of fraud, wilful mis-statement or suppression of facts, within five years from the relevant date, serve notice on the person chargeable with service tax which has not been levied or paid or which has been short-levied or short-paid.

8. Service tax being administered under the self-assessment regime, it was incumbent on the service providers to completely disclose their activities that have a relevance on their tax liability. There being no monitoring of their activities of business and no maintenance of any statutory records, whatever amount is shown as taxable income in the ST-3 returns was accepted by the department. It was only during audit of their service tax records that a clear perspective of their functioning came to notice.

8.1 From the evidences above, it appeared that the said assessee contravened the legal provisions intentionally. The deliberate non-payment of service tax is in disregard to the requirements of law and breach of trust deposited on them. Therefore, the proviso to Section 73(1) of the Act for recovery of service tax was to be invoke.

9. Under the provisions of Section 75 of the Act, the assessee is also liable to pay interest on the amount of service tax not paid. It appeared that by not disclosing relevant facts, the assessee had suppressed the material facts with an intention to evade the payment of service tax. It, therefore, appeared that the assessee would be liable for penalty under Sections 78(1) of the Act.

10. Pre-Show Cause Notice consultation for Litigation Management and Dispute Resolution, in terms of instructions issued from File No 1080/09/DLA/MISC/15 dated 21.12.2015, F. No. 1080/DLA/CC Conference/2016 dated 13.10.2016 and Master Circular No. 1053/02/2017-CX dated 10.03.2017, was granted on 18.10.2019, but there was no representation.

11. In terms of the saving clause under Section 174(2) of the CGST Act, 2017, the Show Cause Notice has been issued.

12. M/s Endeavor Careers Pvt. Ltd., having their Office at 101, Suyojan Towers, Near Hotel President, Off C. G. Road, Ahmedabad - 380



009 were called upon vide F. No. STC/04-33/Endeavour/O&A/2019-20 dated 13.05.2020, to show cause to the Additional Commissioner of CGST, having his office at 6th Floor, CGST Bhavan, Ambawadi, Ahmedabad - 380 015 as to why :

- (a) The non-payment/ Short payment of Service Tax amounting to Rs **1,25,55,853/-**, (Rs 1,23,92,929/- + Rs. 33,144/- + Rs. 1,29,780/-) for the taxable services for the period F. Y. 2013-14 to F.Y. 2015-16, should not be demanded and recovered from them under the proviso to Section 73(1) read with Section 68 of the Finance Act, 1994, as amended, by invoking extended period of five year;
- (b) Interest as applicable on the amount of service tax liability should not be demanded and recovered from them under Section 75 of the Finance Act, 1994 as amended;
- (c) Interest amounting to Rs **42,85,449/-** for delay in discharge of Service Tax liability for the period F.Y. 2013-14 to F.Y. 2015-16, as discussed hereinabove, should not be demanded and recovered from them under Section 75 of the Finance Act, 1994 as amended;
- (d) Penalty/late fees amounting to Rs **1,04,300/-**, for late filing of ST-3 Returns for the period F.Y. 2013-14 to F.Y. 2015-16, as discussed hereinabove, should not be demanded and recovered from them under Section 70 of the erstwhile Finance Act, 1994 as amended read with rule 7C of Service Tax Rules;
- (e) Penalty should not be imposed upon them under Section 77(2) of the Finance Act, 1994 as amended, for failure to self assess the tax due properly on the services provided /received for the period F.Y. 2013-14 to F.Y. 2015-16; and
- (f) Penalty under Section 78 of the erstwhile Finance Act, 1994 should not be imposed upon them for non-payment of service tax by willfully suppressing the facts from the department with intent to evade the payment of Service Tax.

13. A personal hearing was held in virtual mode on 12.04.2022, during which Shri Punit Prajapati, Chartered Accountant and authorised person of the assessee appeared and put forth his submission. On the issue of tax demand on study material supplied for the coaching, he submitted that there are judgments which say that amount received by other persons

cannot be considered as taxable value of the service provider. He sought further time for filing defense submissions.

14. He was reminded vide letter of even number dated 06.05.2022 to file written submissions. Finally a reply to the Show Cause Notice was filed by the Noticee on 11.05.2022. Summary of the submissions given below:

14.1 *“Earlier, they were served with another Show Cause Notice No. STC/04-27/Prev/Gr VIII/16-17 dated 18.10.2017, issued by the Joint Commissioner(Prev), CGST & C. Ex Ahmedabad North. Against the above Show Cause Notice, they had applied for Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019 (SVLDRS) on 13.01.2020 by filing Form SVLDRS-1, and they got full amnesty and relief through Order in Form SVLDRS 4 dated 02.03.2020; that the issue of non-payment of interest of Rs 42,85,449/-, the demand against claim for exemption to services provided to Atmiya Institute of Technology & Science, Rajkot (Money value Rs 1,29,780/-) and penalty for late filing of ST-3 Returns, (Money value Rs 1,04,300/-) are already covered under the SCN dated 18.10.2017 and thus, for the above issues for the same period, for the same amount and on the same ground, the subject SCN has been issued. However, since the grounds raised in the Show Cause Notice dated 18.10.2017 are already closed on issuance of Form SVLDRS 4 dated, 02.03.2020, issuing SCN dated 13.05.2020 and confirming the same demand would not only be improper but would clearly violate provisions of SVLDRS under the Finance Act, 2019. Regarding the demand under RCM for availing services from M/s LinkedIn Ireland, a firm having office in Ireland, for educational information, it was submitted that even though they may be liable for service tax under RCM, since audit is already undertaken and nothing is found adverse, and there being no evidence of suppression against them, the demand is time barred as extended period of limitation cannot apply. Regarding the demand for service tax on the amounts received from students towards cost of reference material/ study material, in the similar matter, there is judgment of Hon’ble High Court of Punjab and Haryana in the case of Commissioner of Central Excise, Chandigarh-I Versus Pinnacle clarifying non-availability of exemption is applicable only if material supplied by Institute and not by a third supplier. (2017 (49) STR 227 (P & H). It was further submitted that similar matter is also pending before Hon’ble Supreme Court in Civil Appeal Diary No. 43517 of 2018 filed by Commissioner of Customs, Central Excise and Service Tax, Hyderabad II, against CESTAT Final Order No. A/30661/2018 dated 30.05.2018 (Commissioner Vs FIITJEE, Hyderabad*

Classes). There is another Civil Appeal Diary No. 27388 of 2018 filed by Commissioner, Service Tax, New Delhi, against CESTAT Final Order No. ST/A/51948-51949/2017-CU(DB) dated 16.02.2017. (Career Launcher India Limited Vs Commissioner.)

14.2 *"However, since there is no stay granted by the Hon'ble Supreme Court in above cases till date, the judgment of Punjab & Haryana High Court in the matter of M/s Pinnacle supra shall hold the field and confirming the demand against such judgment would be violation of judicial discipline.*

14.3 *"It was further submitted that separate receipts for study materials are issued to the student by M/s Endeavour Publishing Co Pvt Ltd and M/s Endeavour Careers Pvt Ltd has issued receipts for Coaching fees and paid service tax thereon.*

14.4 *"They have also relied on the decision of Hon'ble Delhi High Court in the case of Intercontinental Consultants and Technocrats Pvt Ltd, wherein it has been held that any re-imbusement shall not be added to value beyond gross amount charged; that they have provided all details in respective service tax returns and in that they have not covered the value of reference / study materials because it is not subject to tax and so, they have not suppressed any information and so, invoking extended period is unlawful".*

Discussion and findings:-

15. I have carefully gone through the facts of this case and considered the submissions made by the Noticee.

16. This Show Cause Notice was issued following the objections raised by CAG auditors during scrutiny of records. The audit was conducted in the month of December, 2016. I find that independent of the CAG audit, on the basis of intelligence gathered, another Show Cause Notice bearing F. No. STC/04-27/Prev/Gr VIII/16-17 dated 18.10.2017, was issued by the Joint Commissioner, CGST Ahmedabad North Commissionerate, to the same Noticee. On a perusal of both of these Show Cause Notices, I find that there is an overlapping of demand raised on the following issues:



- i) Non-payment of interest amounting to Rs 42,85,449/- towards delay in discharge of Service Tax liability for the period F.Y. 2013-14 to F.Y. 2015-16. (Demand at serial number (c) in the SCN dated 13.05.2020.)
- ii) Non-payment of Service tax towards services provided to Atmiya Institute of Technology & Science, Rajkot (Demand of Service tax of Rs 1,29,780/- is a part amount of tax demanded at serial (a) in the SCN dated 13.05.2020.)
- iii) Penalty proposed for late filing of ST-3 Returns, (amount of penalty Rs 1,04,300/-, at serial (d) of the SCN dated 13.05.2020.)

17. The Noticee has submitted that they had opted for the tax amnesty scheme SVLDRS in January, 2020, in respect of the Show Cause Notice No. STC/04-27/Prev/Gr VIII/16-17 dated 18.10.2017, issued by the Joint Commissioner, CGST Ahmedabad North Commissionerate; that they have obtained full amnesty and relief through the Order in Form SVLDRS 4 No. L020320SV300514 dated 02.03.2020, on making a pre-deposit of **Rs 77,37,208/-**.

18. In this regard, I have called for the SVLDR file No. SVLDR-170/PC/19-20, of this Office and it is observed that M/s Endeavour Careers Pvt Ltd had filed an application under the SABKA VISHWAS (Legacy Dispute Resolution) Scheme, 2019 with reference to the Show Cause Notice F. No. STC/4-27/Prev/Gr VIII/16-17 dated 18.10.2017. The application was verified by making a reference to the Commissioner, Central GST, Ahmedabad North. The pre deposit of Rs 77,37,208/- was confirmed and thereafter, the Form No. SVLDRS-4 dated 02.03.2020, was issued by the Designated Committee comprising of the Principal Commissioner, Central GST, Ahmedabad South and the Additional Commissioner, Central GST Ahmedabad South. Therefore, I find that the demand raised in Show Cause Notice F. No. STC/04-33/Endeavour/O&A/2019-20 dated 13.05.2020, as narrated at serial no. i), ii) and iii) in paragraph no. 16 above, have to be vacated as the same demand was also raised in the SCN dated 18.10.2017 and concluded on issue of Form SVLDR 4 dated 02.03.2020.

19. In view of what is stated above, only the below listed proposals require to be adjudicated in this case:

- a) Whether the demand of Rs 1,23,92,929/- towards non- payment of Service tax on the cost of study material/reference material provided to the students through their subsidiary company is required to be upheld;



- b) Whether service tax of Rs 33,144/- is payable on services received from a provider located outside of India under reverse charge mechanism;
- c) Whether interest under Section 75 is to be recovered towards the above demand and
- d) Whether a penalty under Section 78 and under Section 77(2) of the erstwhile Finance Act, 1994 is required to be imposed.

I am taking up each of the above proposals here for discussion.

20. A demand of Service tax, amounting to Rs 1,23,92,929/- is raised on the grounds that the Noticee had split the value of commercial training and coaching service into two, one for the coaching imparted and the other, for the study material which was being supplied through M/s Endeavour Publishing Company, a subsidiary of the Noticee company. No Service tax was paid on the value of study material supplied.

21. In reply, the Noticee have submitted that there is judgment of Hon'ble High Court of Punjab and Haryana in the case of Commissioner of Central Excise, Chandigarh-I Versus Pinnacle, reported at 2017 (49) STR 227 (P & H), clarifying that exemption would not be available only if material is supplied by Institute and not by a third supplier.

22. I find that the Noticee is a provider of commercial training and coaching service, for candidates appearing in competitive examinations like CAT, CLAT, GMAT etc. Being highly competitive entrance examinations, the study material for such training is highly coveted and specially prepared by the Noticee and it is meant only for the students of Endeavour Careers Pvt Ltd. Therefore, the study material is not like standard text books like those prescribed for school or college students. Intellectual property in such study material is owned by the Noticee and as such, it is not available for gratis for public consumption. Further, the study material in question is inseparably linked to the provision of service. Without the study material in question, the coaching imparted is not complete.

23. It is significant to note that the study material is supplied through a subsidiary company that is 99.99% owned by the Noticee and over which they have complete control. Therefore, it is as good as the material being

supplied by the Noticee themselves. Even while the billing is done separately, value of study material is coming into the subsidiary company, owned 99.99 percent by the Noticee Company.

24. In so far as the judgment of Punjab & Haryana High Court supra, is concerned, the facts involved are different. I find the study material in that case was procured by M/s Pinnacle from another entity named M/s Bulls Eye, Pune, who had appointed Pinnacle as the authorized distributor for the said books in Chandigarh, Punjab, Haryana and Himachal Pradesh. Further, Pinnacle had purchased the books from M/s Bulls Eye, Pune, and sold it to students. They were not the owner of the study material and were not getting any royalty from M/s Bulls Eye in the sale of such books. In that context, the Hon'ble Tribunal and later the Hon'ble High Court, held that the benefit of exemption Notification No. 12/2003-ST dated 20.06.2003 cannot be denied for the value of study material which was purchased from a different entity.

25. In the present case however, the study material is provided by a subsidiary of the Noticee and therefore, it cannot be said that a different entity is supplying the material. Further, the study material is prepared by persons in Endeavour Careers Pvt Ltd and the intellectual property in such material is owned by Endeavour. Further, the proceeds of supply of the material do not go outside the group. In fact, there is no sale of goods happening as it is purely a service delivery and it cannot be compared with say, authorised service station of motor vehicles, where they charge for items used for servicing of automobiles. Therefore, the facts involved in the present case are different and I find the value of study material would form a part of the value of Commercial training and coaching service and there is no case for exemption under Notification No. 12/2003-ST dated 20.06.2003.

26. M/s Endeavour Careers Pvt Ltd have cited two other cases where revenue has filed appeals before the Hon'ble Supreme Court. The Civil Appeal No. 96 of 2019 (Diary No. 43517 /2018), in the case involving FIITJEE Hyderabad Classes was dismissed as withdrawn on account of low revenue effect. However, the Tribunal, in Final Order No. 50512/2017 dated 23.01.2017, leading to the said Civil Appeal had noted that FIITJEE Hyderabad Classes was supplying the study material /books to non-registered students also; that their prospectus advertising for various

coaching programs clearly mentions the price of books and study materials. However, in the case of M/s Endeavour Careers Pvt Ltd, there is no sale of training material to persons who are not registered taking place and as such, there is no need for printing price of books and materials. Therefore, the case law stands differentiated.

27. The second revenue appeal (Diary No. 27388/2018) is pending before the Hon'ble Supreme Court. However, in the said case also, while passing the Final Order No. 51948-51949/2017-18 dated 16.02.2017, the Tribunal held in favour of the respondents on the basis of FIITJEE supra, which is different on facts. Therefore, I conclude that the citations referred to in the defense submissions are not applicable to the present case.

28. The Noticee have further, cited the case of UOI Vs M/s Intercontinental Consultants & Technocrats Pvt Ltd, reported at 2013 (29) S.T.R. 9 (Del), which is upheld in Supreme Court, reported at 2018 (10) G.S.T.L. 401 (S.C.), to contend that reimbursable expense is not liable to service tax.

29. In the case cited, the Hon'ble Delhi High Court held that certain expenditure/costs such as travel, hotel stay, transportation etc, incurred by service provider in the course of providing taxable service cannot be considered as amount charged by Service provider for taxable service rendered. These expenses are found to be mostly for incidental or ancillary work/activity, incurred by service providers, and required for provision of taxable services concerned.

30. However, in so far as the supply of study material is concerned, it is the most important part in the provision of commercial training and coaching service. Success of candidate in a professional entrance examination depends a great deal on the quality of study material used for preparation. Such study material is prepared by expert professionals who are highly knowledgeable in the field and they spend considerable amount of time and efforts in gathering relevant information, their presentation etc. So, study material is very crucial for preparation for competitive examinations and the value of such an important aspect of training cannot be relegated to the level of expense for an incidental or ancillary activity like air travel, hotel stay, etc, incurred by a Service provider. In view of the above, I find the Delhi High Court Order cited is not helpful to the noticee.



The value of study material which is separately charged would form a part of taxable value for the Noticee. Further, they are also not entitled to exemption under Notification No. 12/2003-ST dated 20.06.2003, and they are liable to pay Service tax on the provision of study materials.

31. Service tax demand of **Rs 33,144/-** is raised in respect of payments made to a foreign based entity M/s LinkedIn, Ireland, towards educational information related services received during the period from April, 2013 to March, 2016. I find they have accepted the liability to pay service tax in their defense submissions but have contested the matter on limitation. It was argued that since department had conducted audit of their records and nothing adverse noticed, suppression cannot be alleged and normal period was over.

32. It is not in dispute that in terms of rule 2(1)(d)(G) of Service Tax Rules, 1994, M/s Endeavour were liable to pay Service tax as a recipient of service from service provider based in foreign jurisdiction. Wherever there is a liability to pay Service tax, the particulars of such transactions ought to be declared in the ST-3 Returns filed for the relevant period and tax should also be paid. Since the same was not done, suppression is involved and extended period has been correctly invoked. Audit of records being done at a later date is not relevant for deciding whether suppression is involved.

33. I am also required to give a finding on whether penalty under Section 78 and under Section 77(2) is required to be imposed on the Noticee in the given facts of this case.

34. The Section 78 (1) of the Finance Act, 1994 proposes to impose penalty for failure to pay service tax by reason of fraud, wilful mis-statement or suppression of facts. It shall be equal to the amount of service tax demanded but in terms of the first proviso to sub section (1) of Section 73, where details of such transactions are recorded in specified records, for the period from 08.04.2011 to 14.05.2015, the penalty shall be 50 percent of the service tax determined.

35. I find the Noticee were aware that Service tax is payable on the study material that was being supplied to candidates enrolled for commercial training and coaching, for various competitive examinations.



However, to avoid the liability, they have routed the supply to their subsidiary company so that they can claim the material is supplied by another company. By doing this, it was ensured that the highly coveted study material is not at risk of being available to outside entities and at the same time, it can be argued that the supply is by a different entity. I have already discussed in previous paragraphs that study materials supplied in this case is also chargeable to Service tax and the service provider is liable to pay the tax.

36. Similarly, in the case of services received from a foreign jurisdiction, the Noticee were aware of their liability under reverse charge mechanism. However, they did not pay the tax during the relevant period and when the demand was raised, limitation is pleaded.

37. I therefore, find that in both the above instances, there was a wilful disregard of their statutory liability on the part of the Noticee and they have made efforts to side step their responsibility. In view of the above, I find the Noticee is liable for penalty under Section 78 of the Finance Act, 1994. However, since the details relating to such transactions are recorded in the specified records for the period April, 2013 to 14.05.2015, I hold that penalty for the transactions during the said period shall be fifty per cent of the service tax so determined.

38. The sub section (2) of Section 77 provides that "any person, who contravenes any of the provisions of this Chapter or any rules made thereunder, for which no penalty is separately provided in this Chapter, shall be liable to a penalty which may extend to ten thousand rupees". I find there is no case for imposing a penalty under this sub section as a part of the Show Cause Notice already stands concluded wherein issues like late filing of returns, late payment of Service tax etc have been concluded by issue of SVLDR 4.

39. In view of the above discussions, I hereby pass the following Order;

O R D E R

(a) I hereby uphold the demand of Service tax amounting to Rs **1,23,92,929/-**, in respect of the supply of study materials under



sub section (2) of Section 73, as exemption under Notification No. 12/2003-ST dated 20.06.2003 is not admissible to them.

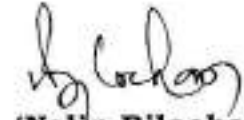
- (b) I hereby uphold the demand of Service tax amounting to Rs 33,144/- in respect of taxable services received from foreign jurisdiction under sub section (2) of Section 73 of the Finance Act, 1994.
- (c) It is ordered that interest on the amount of service tax demanded above at (a) and (b) is payable and should be recovered from the Noticee under Section 75 of the Finance Act, 1994.
- (d) I hereby impose a penalty amounting to **Rs 89,08,992/-** under Section 78, as worked out in the table below:
- (e)

Srl No.	Period involved	Demand of Service tax (Rs)	Penalty imposed.
1	April, 2013 to March, 2015	70,24,527 + 9634	35,17,080/-
2	2015-16	53,68,402 + 23,510	53,91,912/-
	Total	1,24,26,073/-	89,08,992/-

- (f) I refrain from imposing any penalty on the Noticee under Section 77 (2)
- (g) I hereby vacate the following proposals as they were concluded by issue of SVLDR- 4 dated 02.03.2020.
- (i) Demand for interest of **Rs 42,85,449/-**, for delay in discharge of Service Tax liability for the period F.Y. 2013-14 to F.Y. 2015-16,
- (ii) Penalty/late fees amounting to **Rs 1,04,300/-**, for late filing of ST-3 Returns for the period F.Y. 2013-14 to F.Y. 2-015-16,
- (iii) Service tax amounting to **Rs 1,29,780/-** in respect of services provided to M/s Atmiya Institute of Technology & Sciences, Rajkot.



The Show Cause Notice F.No. STC/04-33/Endeavour/O&A/2019-20 dated 13.05.2020 is accordingly disposed of.



(Nalin Bilochan)

Joint Commissioner,
CGST, Ahmedabad South

F. No. STC/04-33/Endeavor/O&A/2019-20

Dated: 29.06.2022

By Regd. Post A.D./ Hand Delivery

To,
M/s. Endeavor Careers Pvt. Ltd.,
101, Suyojan Towers,
Near Hotel President,
Off. C.G. Road, Ahmedabad - 380 009

Copy to:

1. The Principal Commissioner, CGST, Ahmedabad South.
2. The Assistant Commissioner, Division VI, CGST, Ahmedabad South.
3. The Superintendent, Range IV, Division-VI, CGST, Ahmedabad South.
- ✓ 4. The Deputy/ Assistant Commissioner, Systems for uploading on web site.
5. Guard File.
6. TRC