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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ W.P.(C) 12875/2018 and CM APPL. 49880/2018

I.I.L.M INSTITUTE FOR HIGHER EDUCATION.....Petitioner

Through: Ms. Deepanwita Chakraborty, Advocate for Mr. Virat K. Anand, Advocate.

versus

PRINCIPAL COMMISSIONER, CENTRAL GOODS AND SERVICES TAX & ANR. .....Respondents

Through: Mr. Aakash Pathak, Advocate for Ms. Arunima Dwivedi, SSC.

CORAM:
HON'BLE MR. JUSTICE YASHWANT VARMA
HON'BLE MR. JUSTICE RAVINDER DUDEJA

O R D E R

% 09.09.2024

1. The instant writ petition has been preferred seeking the following reliefs:

> "(A) Issue a Writ of Certiorari or any other appropriate writ, order or direction in the nature thereof to quash and set aside the impugned Final Order No.52643-52644/2018 dated 30.07.2018 passed by the Tribunal whereby the Appeal filed by the Petitioner has been rejected and that of the Department has been allowed and a part of the impugned Misc. Order No. 50713/2018 dated 10.10.2018, whereby the Tribunal has disposed of the Application for Rectification of Mistake and consequently the order in original dated 22.10.2012 and the show causes notices dated 24.04.2009, 14.10.2009, 12.10.2010 and 05.10.2011 from which the proceedings emanate;
>
> (B)Pass any such order or further order(s) which this Hon'ble Court may deem fit and proper in the fact and circumstances of the case.

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2. The principal challenge is to the levy of service tax in terms of the provisions of **Finance Act, 1994**[1] and the various claims of the writ petitioner of being exempt from such levy having been negatived by the respondents. The original decisions have come to be affirmed by the order of the **Customs, Excise and Service Tax Appellate Tribunal**[2] dated 30 July 2018 **.**

3. The writ petitioner is stated to be a society duly registered under the Societies Registration Act, 1860. It had claimed that it was being run on charitable lines and was engaged in imparting education and the grant of diplomas in respect of various subjects. It had asserted that it was duly affiliated to and was offering those courses under the aegis of **IILM University, Chhattisgarh**[3].

4. Before us it was conceded that IILM University had been deprived of the character of a university as recognized in law by virtue of an order of the Supreme Court dated 11 February 2005. The writ petitioner, however, is stated to have continued to offer and administer those courses against fee which was collected. Since it had failed to discharge its tax liability for the period March 2004 to March 2008, as also for April 2008 to August 2009, various Show Cause Notices came to be issued and consequential demands raised.

5. The respondents have essentially taken the view that since the writ petitioner was not engaged in the activity of coaching and training, which may have led to the grant of a certificate, diploma, degree or any other educational qualification "*recognized by any law*

[1] Act
[2] CESTAT
[3] IILM University

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for the time being in force" it was not exempt from the liability of tax under the Act.

6. The CESTAT has succinctly noticed the statutory scheme underlying the taxation of services provided by a commercial training or coaching centres. It has firstly taken note of the Act defining a '*commercial training or coaching*' as set out in Section 65(26) as '*any training or coaching provided by a commercial training or coaching centre'*. The expression '*commercial training or coaching centre*' stands defined in Section 65(27) to mean '*any institute or establishment providing commercial training or coaching for imparting skill or knowledge or lessons on any subject or field other than sports, with or without issuance of a certificate and includes coaching or tutorial classes*'. '*Taxable service*' as defined in Section 65(105)(zzc) includes the service provided to any person by a commercial training or coaching centre.

7. By virtue of Finance Act, 2010 an explanation came to be inserted in Section 65(105)(zzc) with retrospective effect from 01 July 2003 clarifying that the word '*commercial*' would mean training or coaching services being provided for consideration and uninfluenced by whether such training or coaching was conducted with a profit motive. By virtue of a Notification no. 33/2011 dated 25 April 2011 exemptions came to be granted to coaching and training centres and which would have led to the grant of a certificate, diploma, degree or any other educational qualification recognized by law.

8. It is in the aforesaid context that the CESTAT has come to conclude that the petitioner cannot derive any benefit from the exemption notifications since the diploma or certificate that it would

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have ultimately granted would not qualify the condition of being '*recognized by law*'.

9. While a testimonial, degree or diploma which can be said to be recognized in law is a concept by now well settled and could only mean degrees, diplomas or educational qualifications granted or conferred by an authority duly empowered and recognized in law to award such a degree, diploma or grant that educational qualification, the Board by way of abundant caution had duly clarified these aspects in terms of its Circular dated 28 August 2012. The phrase '*recognized by any law*' was thus clarified to encompass courses which were approved or recognized by any entity established under a Central or State legislation, including delegated legislation, for the purpose of granting recognition to any educational course. In this regard we also take note of the judgment of the Supreme Court in **Prof. Yashpal v. State of Chhattisgarh**[4] wherein it was observed as follows:-

> "39. Mere conferment of degree is not enough. What is necessary is that the degree should be recognised. It is for this purpose that the right to confer degree has been given under Section 22 of the UGC Act only to a university established or incorporated by or under a Central Act, Provincial Act or State Act or an institution deemed to be a university under Section 3 or an institution specially empowered by an Act of Parliament to confer or grant degrees. Sub-section (3) of this section provides that "degree" means any such degree as may, with the previous approval of the Central Government, be specified in this behalf by the Commission by notification in the Official Gazette. The value and importance of such degrees which are recognised by the Government was pointed out by a Constitution Bench in S. Azeez Basha v. Union of India [(1968) 1 SCR 833 : AIR 1968 SC 662] ."

10. Quite apart from IILM University and under whose aegis the petitioner had asserted to be functioning had been deprived of its

[4] (2005) 5 SCC 420

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character and status, the CESTAT found that the petitioner had never been recognized in law to grant a degree or diploma. The petitioner had also failed to establish or prove that it was either affiliated with a University or a deemed University it had also woefully failed to establish that it was itself enabled by statute to grant the degree or diploma.

11. It is on an overall conspectus of the aforesaid that the CESTAT came to conclude that the appeals preferred by the writ petitioner lack merit while those instituted by the Department were liable to be allowed.

12. In light of the undisputed position which emerges from the aforesaid discussion, we find no ground to interfere with the order impugned. The writ petition fails and shall stand dismissed.

YASHWANT VARMA, J.

RAVINDER DUDEJA, J.

SEPTEMBER 9, 2024/kk

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