

Service tax on computer training institutes

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THIS analysis owes its birth to the Tribunal decision in the case of Sunwin Technosolutions [[2006-TIOL-1407-CESTAT-KOL](#)] wherein while granting Stay the Tribunal held that as regards

Service Tax on Computer Training Institutes, Insertion of clause (iii) in Explanation to notification is not clarificatory and hence Prima facie the appellant is not chargeable to Service tax for the period 11.09.2004 to 16.03.1995.

Through this piece, an attempt is made to examine whether Service Tax is payable on these Computer Training Institutes during the relevant period.

For this purpose, we take a look at the chronology of notifications in relation to this service.

Service Tax was levied on Commercial Training or Coaching Service from 01.07.2003.

- Notification 9/2003-ST dated 20.6.2003 (w.e.f) exempted the taxable services provided in relation to commercial training or coaching, by, a vocational training institute, a computer training institute or a recreational training institute to any person, from the whole of the service tax. Each of these institutes was defined in the notification vide an Explanation, clauses (i), (ii) & (iii). This notification was prescribed to remain in force up to 29.02.2004. Later, vide notification 1/2004-ST, dated 4.2.2004 validity of this notification was extended to 30.6.2004, after which it lapsed.

- The net effect was that from 01.07.2004 there was no exemption whatsoever in respect of the services provided by these three categories of institutes. **Unfortunate! Probably because the Union Budget for the said year was presented not on 29.2.2004 but only on 09.07.2004, which no one in the TRU could have predicted. At least, they could have once again amended the notification just like they did on 4.2.2004.**

The story goes on!

- Notification 24/2004-ST, dated 10.09.2004 saw its appearance on the day of enactment of Finance Bill 2004 - 2005.

- This exemption notification retained the essence of the earlier notification 9/2003-ST except that **it did not cover the services provided by a computer training institute.**

- It was vide notification 19/2005-ST, dated 7.6.2005 (w.e.f 16.6.2005) that the following two insertions were made in the notification 24/2004-ST, dated 10.09.2004.

- Firstly, a proviso clause was inserted which reads - **Provided that nothing contained in this notification shall apply to the taxable services provided in relation to commercial training or coaching by a computer training institute.**

- Secondly, to the Explanation existing in the notification 24/2004-ST, a clause numbered (iii) was added and which defined what a **computer training institute**. This definition is similar to the one existing in the earlier notification 9/2003-ST (which lapsed on 01.07.2004).

A conjoint reading of the proviso and the clause (iii) of the explanation would clearly indicate that

it is not the Explanation that governs the notification 24/2004-ST, but the proviso clause

which clearly indicates that **computer training institutes** are not exempted **at any cost from 19.06.05.**

One may argue as regards the fact that the proviso clause since inserted w.e.f 16.6.2005, the same comes into play only from that date inasmuch as **computer training institute** has been excluded from the purview of the exemption from that date only.

Obviously, you can exclude only those categories which were earlier included or presumably covered under the notification.

It, therefore, follows that **there is no exemption from payment of Service Tax to 'Computer training institute' for the period 01.07.2004 to 09.09.2004** but the exemption is restored since 10.09.2004 when notification 24/2004-ST made its appearance.

Incidentally, on the subject matter, the Commissioner of Central Excise, Pune-I has issued a Trade notice no. 7/2004, dated 10.08.2004, communicating in paragraph 2 that :-

¶(2) As no further extension was granted in the Finance Bill, 2004, the exemption available to the aforesaid services stands lapsed. Â As such, the services provided in relation to Commercial Training or Coaching, by a vocational training institute, a computer training institute or a recreational training institute, to any person, is liable to taxable w.e.f 1.7.2004.¶

By the way, as far as the two case laws cited in the case of Sunwin Technosolutions is concerned, for the record, as far as the decision in Usha Martin Telekon is concerned, although the Apex Court dismissed the petition of the Revenue, the Tribunal in the case of Skycell Communications ([2005-TIOL-229-CESTAT-MAD](#)) has disagreed with both the decisions in Usha Martin & BPL Mobile and referred the matter to the President for constitution of a Larger Bench, decision of which is awaited. The Tribunal found favour with the Tribunal decision in Penta Media Graphics Ltd, 2003(160)ELT 980(T) where **it was held that the Explanation added is clarificatory in nature and hence applicable retrospectively** . Â Â

The outcome of this LB decision should in no way affect our conclusion for the simple reason that **it is not only the Explanation that has been incorporated but also the proviso** which actually carves out an exclusion .

Coming back, why should one take a leaf from the earlier notification 9/2003-ST and insist that the third category of ¶Computer Training Institute¶ since missing from notification 24/2004-ST, dated 10.09.2004 the exemption is not available. Â Probably an inadvertent error committed by the Ministry in separately defining ¶computer training institute¶ need not be repeated for the simple reason that

these institutes very well fall within the coverage of ¶vocational training institutes

¶. Moreover, since the term ¶computer training institute¶ has been Â incorporated in the notification 24/2004-ST by way of a proviso & an explanation, it is clear that the same was earlier covered.

To conclude, Computer Training Institutes are not exempted from Service tax during the period 01.07.2004 to 09.09.2004 - unfortunately, that is on account of Â the gaffe in not issuing a notification after 30.06.2004. Fortunately, the exemption can be said to have been restored from 10.09.2004 vide notification 24/2004-ST, till the date 15.06.2005, when notification 19/2005-ST made its appearance effective from 16.06.2005.

Happy we would be if the higher authorities issue a clarification on this issue - **sorry, not the DGST - they would further convolute the issue!**