

Commercial Training or Coaching Services – A Refreshing Look

“Government is SUPREME”, the Government has proved this once again through its budget for the year 2010-11. The three retrospective changes proposed in the Finance Bill 2010 gives an indication that the Government can take any step to stimulate its economy. The retrospective amendment in Renting Services w.e.f 01.06.2007 providing that renting in itself is taxable read with the validating provisions is one of its kind in the history of service tax. Another retrospective amendment in Notification No. 5/2006-CE(NT) dated 14.03.2006, has granted great relief to exporters of services seeking refund of service tax paid on input services. However, the third Retrospective amendment w.e.f 01.07.2003 in the definition of ‘Commercial Training or Coaching Services’ (‘CTCS’ in short) has left the tax payers & professionals shocked. As per this retrospective amendment, **Profit motive is no longer a criterion for determining scope of the term ‘Commercial’ under the category of CTCS.** The step appears to be a move to put an end to litigation pending at different levels & thereby increasing the government’s revenue.

(A) Scope of term ‘Commercial’ clarified to widen the Service tax applicability on Coaching/Training Centre-

Section 65(105)(zzc) of Chapter V of Finance Act, 1994 (hereinafter referred as the ‘Act’) provided that any service provided or to be provided by a Commercial training or coaching centre in relation to commercial training or coaching is a taxable service.

‘Commercial Training or Coaching’ means any training or coaching provided by a commercial training or coaching centre - Section 65(26) of the Act.

‘Commercial Training or Coaching Centre’ means any institute or establishment providing commercial training or coaching for imparting skill or knowledge, or lessons on any subjects or field other than sports, with or without issuance of a certificate and includes coaching or tutorial classes but does not include pre-school coaching and training centre or any institute or establishment which issues any certificate or diploma or degree or any educational qualification recognized by law for the time being in force -Section 65(27) of the Act.

The term ‘Commercial’ was interpreted differently by the tax payers, professionals, the department & Courts. One view was that the term ‘Commercial’ means to have a profit motive. In case, the object of an institute is not to earn profits, the same shall not be regarded as ‘Commercial’ and would remain outside the purview of service tax. A divergent view was that the training/coaching should be Commercial and not the institution providing such services.

While these two divergent views were prevailing, some of the cases pending in the Courts got decided. The non-commercial institutes/establishments started relying on the interpretation placed by the Hon’ble Tribunals in the case of ***Great Lakes Institute of Management Ltd. Vs Comm. Of ST (2008) 10 STR 202 (Tri-Chennai)*** and in the case of ***ICFAI v. CC & CE, Hyderabad II [2009] 14 STR 220 (Tri-Bang.)*** wherein it was held that since the appellant is not a ‘commercial concern’, therefore training or coaching rendered by it is not liable to service tax.

To clarify the intent of the legislature in using the word 'Commercial' in the taxable clause of 'Commercial Training or Coaching Services' and to nullify the effect of these judgments, the CBEC issued **Circular No. 107/1/2009-ST dated 28.01.2009** explaining that the phrase 'Commercial Training or Coaching Centre' has been statutorily defined, therefore, there is no scope to add or delete words while interpreting the same. It has been further specified in the said Circular that the definition of "Commercial Training or Coaching Centre" has no mention that such institute must have 'commercial' (i.e. profit making) intent or motive. The word "Commercial" used in the phrase is with reference to the activity of training or coaching and not to the nature or activity of the institute providing the training or coaching. Thus, services provided by all institutes or establishments, which fulfill the requirements of the definition, are leviable to service tax.

However, even after the said clarification by the department, the practice of non-payment of service tax on the training/coaching services provided by non-commercial organizations continued. **To avoid losing a huge amount of revenue in the absence of a statutory definition of the term 'Commercial' in the provisions governing service tax, the government, in its budget 2010 came out with the proposal to amend the taxable clause of CTCS retrospectively w.e.f 01.07.2003.**

As a result, an easy & convenient approach to plug the loophole in the existing taxable clause of CTCS has been identified and therefore, the Finance Bill, 2010 proposes to amend Section 65(105)(zc) of Chapter V of Finance Act, 1994 by inserting an explanation to the said section. With this explanation, it shall be clarified that 'commercial training or coaching centre' includes any centre or institute, by whatever name called, where training or coaching is imparted for consideration, whether or not such centre or institute is registered as a trust or a society or similar other organization under any law for the time being in force and carrying on its activities with or without profit motive. This modification would come into effect from a notified date after the enactment of the Finance Bill, 2010.

Hence, with this explanation, Scope of term 'Commercial' shall be enlarged. Consequently, Profit motive shall no longer remain a criterion for determining taxability under the category of this taxable service. In other words, in case any consideration (whether by name of fees or training charges or by any other name) is collected from the student/trainee for imparting him training or coaching, the same shall be chargeable to service tax. The only exception would be in case the training or coaching so imparted is not commercial in nature and is an education or is in the field of sports, then service tax would not be chargeable.

The reason for such an amendment has been very clearly & elaboratorily provided by the department in its clarification bearing **F No. 334/1/2010-TRU, dated 26.02.2010**. According to the said clarification, the scope of commercial training and coaching service is being redefined. Commercial training and coaching service was introduced in Budget 2003 with a view to tax the mushrooming coaching institutes and training centres which either provide coaching classes for

examinations or unrecognized courses in various areas such as, management, marketing, engineering etc. The schools, institutes, colleges and universities providing courses that lead to award of recognized diplomas/degrees and sports education were kept out of tax net. These include universities created under a Central or State Act, institutes recognized by UGC as universities or deemed universities, institutes granted recognition professional councils like AICTE, Medical Council of India, Bar Council of India etc. To distinguish the former types of institutes/centres from the latter, the word 'commercial' was used in the definitions of 'Commercial training and coaching', 'Commercial training and coaching centres' and 'taxable service'.

Thus, with the proposed retrospective amendment, the purpose behind using the term 'Commercial' in the taxable clause of CTCs would be achieved. Further, since the amendment is being proposed to have a retrospective effect, the benefit of judgment pronounced in the case of *ICFAI v. CC & CE, Hyderabad II [2009] 14 STR 220 (Tri-Bang.) and Great Lakes Institute of Management Ltd. Vs Comm. Of ST (2008) 10 STR 202 (Tri-Chennai)* wherein it has been held that such societies and organizations cannot be commercial in nature, shall have no significance.

Thus, if the coaching or training is being provided for a consideration, it shall be regarded as commercial in nature attracting service tax under Chapter V of the Finance Act, 1994. Being Charitable or running on a non-Profit basis shall no longer be the criteria for determining the taxability under said category of service. In nutshell, with the proposed retrospective amendment, the view taken by the department in its Circular No. 107/01/2009 dated 28.01.2009 shall get a legal backing.

[Note:- Pre-school coaching and training centre or any institute or establishment which issues any certificate or diploma or degree or any educational qualification recognized by law for the time being in force shall continue to be excluded from the levy of Service Tax].

(B) Change in the definition of 'Vocational training institutes' w.e.f 27.02.2010 to broaden the service tax net on training/coaching institutes/establishments.

Till date, vocational training institutes have been exempted from the levy of service tax on 'Commercial training or coaching service' vide Notification No. 24/2004-ST dated 10.09.2004. As per the said notification, Vocational Training Institute means a commercial training or coaching centre which provides vocational training or coaching that impart skills to enable the trainee to seek employment or undertake self-employment, directly after such training or coaching. Since, the term vocational has not been defined in the statutory provisions governing service tax, therefore, the coaching/training industry as a whole, has developed the practice of treating all such training/coaching as vocation which imparts skills, knowledge etc. that are required to do a particular job. Consequently, by taking such a broad interpretation of the term 'vocational', exemption from levy of service tax was being availed by the service providers i.e. training/coaching institutes.

To curb this incorrect practice, Notification No.3/2010-ST, dated 27th February, 2010 has been issued to amend Notification No. 24/2004-ST dated 10.09.2004 by substituting the definition of 'vocational training institute'. As per the amendment, effective from 27.02.2010,

“(i) vocational training institute” means an Industrial Training Institute or an Industrial Training Centre affiliated to the National Council for Vocational Training, offering courses in designated trades as notified under the Apprentices Act, 1961(52 of 1961)”.

Implications of the Change of definition of “vocational training institute”-

With this amendment, Service tax exemption will be available only to industrial training institutes or industrial training centers affiliated to National Council of Vocational Training (NCVT) and offering courses in the designated trades covered under Schedule I of the Apprentices Act, 1961.

Names of eligible vocational training courses listed under Apprentices Act, 1961 are available at web site of Director General of Employment and Training, Ministry of Labour (dget.nic.in). These vocational training courses have largely been divided into two categories namely- Engineering Trades and Non-Engineering Trades. A cursory look at the relevant list reveals that **49 Engineering Trades and 57 Non-Engineering Trades** were notified under Craftsman Training Scheme (CTS) until 01-01-2004 under Apprentices Act 1961. In order to enable the readers to have a broad idea of kinds of courses included in the abovementioned list, a table exhibiting the **illustrative list** of such courses is given below:-

S.No.	Engineering Trades	Non-Engineering Trades
1.	Welder(Gas and Electric)	Cutting and Sewing
2.	Foundry man	Leather Goods maker
3.	Plumber	Manufacture of Footwear
4.	Mechanic Tractor	Photographer
5.	Wireman	Hair & skin care
6.	Fitter	Corporate Housekeeping
7.	Machinist	Creche Management
8.	Draughtsman (Mechanical)	Event Management Assistant
9.	Mechanic Watch & clock	Front Office Assistant
10.	Pattern Maker	Medical Transcription

Quite interestingly, the foregoing web-site also discloses the list of **18 newly approved N.C.V.T. Trades**, syllabi of which are under preparation with D.G.E.T. Accordingly, as and when these newly approved courses are commenced, these will also be entitled to exemption from the levy of Service Tax. Following table enlists a few examples of these trades:-

S. No.	Name of newly approved trade
1.	Mechanic Communication Equipment Maintenance
2.	Hospital Waste Management

3.	Mechanic Repair & Maintenance of light vehicles
4.	Farm Machinery, Equipment Maintenance & Development Technology
5.	Agriculture Processing & Value Addition Technology

Further, the term 'designated trade' has been defined under the Apprentices Act, 1961 as under-

"Sec 2 (e) 'designated trade' means any trade or occupation or any subject field in engineering or technology or any vocational course which the Central Government, after consultation with the Central Apprenticeship Council, may, by notification in the Official Gazette, specify as a designated trade for the purposes of this Act".

Note- The department in its clarification bearing **F No. 334/1/2010-TRU, dated 26.02.2010** has provided that the list figuring under **Schedule 1 of the Apprentices Act, 1961** covers engineering as well as non-engineering skills/trades.

The above mentioned Schedule 1 covers wide-ranging trades and have been placed under 35 broad groups. However, for the sake of ready-reference of readers handful examples of these trades are given below:-

S.No	Name of Designated Trade	S.No.	Name of Designated Trade
1.	Fitter	11.	Wireman
2.	Turner	12.	Auto Electrician
3.	Machinist	13.	Cable Jointer
4.	Machinist(Grinder)	14.	Desk Top Publishing Operator
5.	Pattern Maker	15.	Health & Slimming Assistant
6.	Foundry man	16.	Sales person (Retail)
7.	Sheet Metal Worker	17.	Structural Welder
8.	Motor Vehicle Body Builder	18.	Computer Aided Pattern Maker
9.	Electrician	19.	Book-Binder
10.	Lineman	20	Horticulture Assistant

It appears that this step of widening the meaning of the term 'Commercial' and 'limiting the scope of the term 'Vocational' in the CTCS would have following implications-

- (i) Disputes pending at various levels will automatically come to an end, thereby leading to early disposal of cases.
- (ii) Vast Increase in the revenue to the government treasury.

The amendments indicate the government's initiative to implement its intention which was not explicit from the statutory provisions.