

रजिस्टर्ड डाक ए.डी. द्वारा

: आयुक्त (अपील-I) का कार्यालय केन्द्रीय उत्पाद शुल्क :  
सैन्टल एक्साइज भवन, सातवीं मंजिल, पौलिटैक्नीक के पास,  
आंबावाडी, अहमदाबाद- 380015.

क फाइल संख्या : File No : V2(CS)30 /STC-III/2015/Appeal-I

ख अपील आदेश संख्या : Order-In-Appeal No.: AHM-EXCUS-003-APP-113-16-17  
दिनांक Date 19.09.2016 जारी करने की तारीख Date of Issue 21/9/16

श्री अभय कुमार श्रीवास्तव, आयुक्त (अपील-I) केन्द्रीय उत्पाद शुल्क अहमदाबाद द्वारा पारित

Passed by Shri Abhai Kumar Srivastav Commissioner (Appeals-I) Central  
Excise Ahmedabad

ग \_\_\_\_\_ आयुक्त केन्द्रीय उत्पाद शुल्क, अहमदाबाद-III आयुक्तालय द्वारा जारी मूल आदेश सं  
दिनांक : \_\_\_\_\_ से सृजित

Arising out of Order-in-Original No GNR-STX-DEM-DC-44/2015 dated : 29.07.2015

Issued by: Deputy Commissioner, Central Excise, Din: Gandhinagar, A'bad-III.

घ अपीलकर्ता / प्रतिवादी का नाम एवं पता Name & Address of The Appellants/Respondents

**M/s. M.R.Education**

इस अपील आदेश से असंतुष्ट कोई भी व्यक्ति उचित प्राधिकारी को अपील निम्नलिखित प्रकार से कर सकता है:-

Any person aggrieved by this Order-in-Appeal may file an appeal to the appropriate authority in the following way :-

सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण को अपील:-

Appeal to Customs Central Excise And Service Tax Appellate Tribunal :-

वित्तीय अधिनियम, 1994 की धारा 86 के अंतर्गत अपील को निम्न के पास की जा सकती:-

Under Section 86 of the Finance Act 1994 an appeal lies to :-

पश्चिम क्षेत्रीय पीठ सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण ओ.20, न्यू मैन्टल हास्पिटल कम्पाउण्ड, मेधाणी नगर, अहमदाबाद-380016

The West Regional Bench of Customs, Excise, Service Tax Appellate Tribunal (CESTAT) at O-20, Meghani Nagar, New Mental Hospital Compound, Ahmedabad - 380 016.

(ii) अपीलीय न्यायाधिकरण को वित्तीय अधिनियम, 1994 की धारा 86 (1) के अंतर्गत अपील सेवाकर नियमावली, 1994 के नियम 9(1)के अंतर्गत निर्धारित फार्म एस.टी- 5 में चार प्रतियों में की जा सकेगी एवं उसके साथ जिस आदेश के विरुद्ध अपील की गई हो उसकी प्रतियाँ भेजी जानी चाहिए (उनमें से एक प्रमाणित प्रति होगी) और साथ में जिस स्थान में न्यायाधिकरण का न्यायपीठ स्थित है, वहाँ के नामित सार्वजनिक क्षेत्र बैंक के न्यायपीठ के सहायक रजिस्ट्रार के नाम से रेखांकित बैंक ड्राफ्ट के रूप में जहाँ सेवाकर की मांग, ब्याज की मांग और लगाया गया जुर्माना रूपए 5 लाख या उससे कम है वहाँ रूपए 1000/- फीस भेजनी होगी। जहाँ सेवाकर की मांग, ब्याज की मांग और लगाया गया जुर्माना रूपए 5 लाख या 50 लाख तक हो तो रूपए 5000/- फीस भेजनी होगी। जहाँ सेवाकर की मांग, ब्याज की मांग और लगाया गया जुर्माना रूपए 50 लाख या उससे ज्यादा है वहाँ रूपए 10000/- फीस भेजनी होगी।

(ii) The appeal under sub section (1) of Section 86 of the Finance Act 1994 to the Appellate Tribunal Shall be filed in quadruplicate in Form S.T.5 as prescribed under Rule 9(1) of the Service Tax Rules 1994 and Shall be accompanied by a copy of the order appealed against (one of which shall be certified copy) and should be accompanied by a fees of Rs. 1000/- where the amount of service tax & interest demanded & penalty levied of Rs. 5 Lakhs or less, Rs.5000/- where the amount of service tax & interest demanded & penalty levied is is more than five lakhs but not exceeding Rs. Fifty Lakhs, Rs.10,000/- where the amount of service tax & interest demanded & penalty levied is more than fifty Lakhs rupees, in the form of crossed bank draft in favour of the Assistant Registrar of the bench of nominated Public Sector Bank of the place where the bench of Tribunal is situated.



(iii) वित्तीय अधिनियम, 1994 की धारा 86 की उप-धारा (2ए) के अंतर्गत अपील सेवाकर नियमावली, 1994 के नियम 9 (2ए) के अंतर्गत निर्धारित फार्म एस.टी.7 में की जा सकेगी एवं उसके साथ आयुक्त, केन्द्रीय उत्पाद शुल्क/ आयुक्त, केन्द्रीय उत्पाद शुल्क (अपील) के आदेश की प्रतियाँ ( उसमें से प्रमाणित प्रति होगी) और आयुक्त/सहायक आयुक्त अथवा उप आयुक्त, केन्द्रीय उत्पाद शुल्क, अपीलीय न्यायाधिकरण को आवेदन करने के निदेश देते हुए सीमा एवं केन्द्रीय उत्पाद शुल्क बोर्ड/ आयुक्त, केन्द्रीय उत्पाद शुल्क द्वारा पारित आदेश की प्रति भेजनी होगी।

(iii) The appeal under sub section and (2A) of the section 86 the Finance Act 1994, shall be filed in For ST.7 as prescribed under Rule 9 & (2A) of the Service Tax Rules, 1994 and shall be accompanied by a copy of order of Commissioner Central Excise or Commissioner, Central Excise (Appeals) (one of which shall be a certified copy) and copy of the order passed by the Central Board of Excise & Customs / Commissioner or Dy. Commissioner of Central Excise to apply to the Appellate Tribunal.

2. यथासंशोधित न्यायालय शुल्क अधिनियम, 1975 की शर्तों पर अनुसूची-1 के अंतर्गत निर्धारित किए अनुसार मूल आदेश एवं स्थगन प्राधिकारी के आदेश की प्रति पर रु 6.50/- पैसे का न्यायालय शुल्क टिकट लगा होना चाहिए।

2. One copy of application or O.I.O. as the case may be, and the order of the adjuration authority shall bear a court fee stamp of Rs.6.50 paise as prescribed under Schedule-I in terms of the Court Fee Act, 1975, as amended.

3. सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्यविधि) नियमावली, 1982 में चर्चित एवं अन्य संबंधित मामलों को सम्मिलित करने वाले नियमों की ओर भी ध्यान आकर्षित किया जाता है।

3. Attention is also invited to the rules covering these and other related matters contained in the Customs, Excise and Service Appellate Tribunal (Procedure) Rules, 1982.

4. सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय प्राधिकरण (सीस्तेत) के प्रति अपीलों के मामलों में केन्द्रीय उत्पाद शुल्क अधिनियम, 1988 की धारा 34फ के अंतर्गत वित्तीय(संख्या-2) अधिनियम 2014(2014 की संख्या 25) दिनांक: 06.08.2014 जो की वित्तीय अधिनियम, 1994 की धारा 23 के अंतर्गत सेवाकर को भी लागू की गई है, द्वारा निश्चित की गई पूर्व-राशि जमा करना अनिवार्य है, बशर्ते कि इस धारा के अंतर्गत जमा की जाने वाली अपेक्षित देय राशि दस करोड़ रूपए से अधिक न हो

केन्द्रीय उत्पाद शुल्क एवं सेवाकर के अंतर्गत " माँग किए गए शुल्क " में निम्न शामिल है

- (i) धारा 11 डी के अंतर्गत निर्धारित रकम
- (ii) सेनवैट जमा की ली गई गलत राशि
- (iii) सेनवैट जमा नियमावली के नियम 6 के अंतर्गत देय रकम

→ आगे बशर्ते यह कि इस धारा के प्रावधान वित्तीय (सं. 2) अधिनियम, 2014 के आरम्भ से पूर्व किसी अपीलीय प्राधिकारी के समक्ष विचाराधीन स्थगन अर्ज़ी एवं अपील को लागू नहीं होगा।

4. For an appeal to be filed before the CESTAT, it is mandatory to pre-deposit an amount specified under the Finance (No. 2) Act, 2014 (No. 25 of 2014) dated 06.08.2014, under section 35F of the Central Excise Act, 1944 which is also made applicable to Service Tax under section 83 of the Finance Act, 1994 provided the amount of pre-deposit payable would be subject to ceiling of Rs. Ten Crores,

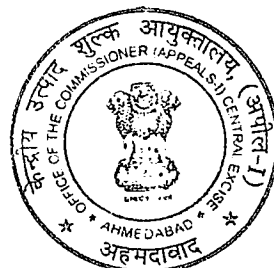
Under Central Excise and Service Tax, "Duty demanded" shall include:

- (i) amount determined under Section 11 D;
- (ii) amount of erroneous Cenvat Credit taken;
- (iii) amount payable under Rule 6 of the Cenvat Credit Rules.

→ Provided further that the provisions of this Section shall not apply to the stay application and appeals pending before any appellate authority prior to the commencement of the Finance (No.2) Act, 2014.

(4)(i) इस संदर्भ में, इस आदेश के प्रति अपील प्राधिकरण के समक्ष जहाँ शुल्क अथवा शुल्क या दण्ड विवादित हो तो माँग किए गए शुल्क के 10% भुगतान पर और जहाँ केवल दण्ड विवादित हो तब दण्ड के 10% भुगतान पर की जा सकती है।

(4)(i) In view of above, an appeal against this order shall lie before the Tribunal on payment of 10% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute."



ORDER IN APPEAL

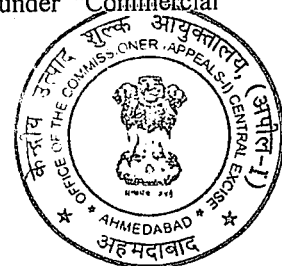
This appeal has been filed by M/s M R Education, Gandhinagar (hereinafter referred to as "the appellant") against Order-in-Original No.GNR-STX-DEM-DCF-44/2015, dated 29.07.2015 passed by the Deputy Commissioner of Central Excise, Service Tax Division, Gandhinagar [hereinafter referred to as "adjudicating authority", for brevity].

2. Briefly stated, the appellant is providing commercial coaching and training services. The jurisdictional Central Excise Officers booked an offence case for evasion of service tax against the appellant on 29.12.2011. During the course of investigation, it was observed that they were conducting coaching classes for students and receiving fees under the head viz., tuition fees, adharshila fees, consulting fees and hostel fees during the year 2008-2009; that the said activities carried out by the appellant falls within the definition of "Commercial Coaching & Training" under Section 65(26) of Finance Act, 1994 and is taxable under Section 65(105(zzc) of the Act, *ibid*, for the consideration received during the period. Scrutiny of bill book, registers and Profit and Loss Account for the year 2008-09, revealed that though the appellant had received taxable income of Rs. 44,47,006/-, and he had not discharged his service tax. Therefore, a show cause notice dated 26.09.2013, demanding service tax of Rs.4,26,050/- along with interest and proposing penalty on the appellant, was issued. This notice was adjudicated vide the impugned order, wherein the adjudicating authority confirmed the service tax along with interest and imposed penalties under sections 78, 77 (1a) and 77(2) of the Finance Act, 1994. He further imposed a late fee under Rule 7C of Service Tax Rules, 2004.

3. Being aggrieved, the appellant has filed the present appeal on the grounds that of the service tax liability amounting to Rs.4,26,050/-, an amount of Rs.66,374/- along with interest and applicable penalties has been paid within 30 days of receipt of the impugned order; that they are disputing an amount of Rs.29,10,000/- reflected in the Profit & Loss Account shown as income earned from consulting fees; that they did not earn any such income on account of consulting fees; that the said amount, entered in the books of accounts, is a clerical mistake committed by their accountant; that no corroborative evidences were made available by the department to establish that the said amount was received by them on account of consulting fees. It is further contended that the observation of the department of there being credit of Rs. 35,88,352/- during 2008-09 in bank statement, is incorrect. Therefore, the appellant argued that service tax is not imposable on the said amount of Rs. 29,10,000/- which was an entry, owing to a clerical mistake.

4. A personal hearing in the matter was held on 08.08.2016. Shri Kiran Parikh, Chartered Engineer appeared on behalf of the assessee. He reiterated the submission made in the grounds of appeal.

5. I have gone through the case records and submissions made by the appellant. At the outset, I observe that the appellant has only disputed the service tax demand on Rs. 29,10,000/- which was confirmed towards the taxable value, said to be received on account of consultation fees. Therefore, I limit the issue at hand to decide whether the said amount of Rs. 29,10,000/-, reflected in the Profit & Loss Account for the year 2008-09, is taxable under "Commercial Coaching & Training" service.



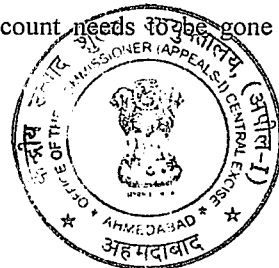
6. As per definition under Section 65 (26) of the Act, "Commercial Coaching & Training" service means "any institute, or establishment providing commercial training or coaching for imparting skill or knowledge or lessons on any subject or field other than the sports, with or without issuance of a certificate and includes coaching or tutorial classes". Taxable service in relation to the said service, as per Section 65(105) (zcc) of the Act means "any service provided or to be provided to any person, by a commercial training or coaching centre in relation to commercial training or coaching".

7. There is, however, no dispute from either side that the service being provided by the appellant falls within the ambit of "Commercial Coaching & Training". The only dispute is in relation to an entry of Rs. 29,10,000/- reflected in the Profit and Loss account under the head Direct Income, shown to have been received towards consulting fees. It is the appellant's contention that it was an erroneous entry. The Profit & Loss Account for the year 2008-2009, reveals a direct income of Rs. 43,98,106/-, which includes the disputed amount of Rs. 29,10,000/-, on account of consulting fees and direct expenses of Rs. 12,94,798/-. The net profit as per the Profit and Loss account is of Rs. 31,03,308/-. If the contention of the appellant is correct, the net profit would have been only Rs. 1,93,418/-. To further his contention of the entry being made through oversight, the appellant has provided a copy of his Income Tax Return, for the relevant period, which depicts his net profit at Rs.1,45,065/-.

8. It is fact that the amount of Rs .29,10,000/-was reflected in the Profit and Loss Account during the relevant period through a receipt voucher dated 12.03.2009. Although Income Tax return supports the argument of the appellant, the figures still vary. Further, the documentary proof viz., receipt voucher, tally sheet and entry in the Profit and Loss Account, which supports the departmental claim, cannot be ignored as a simple clerical mistake. Profit & Loss Account and Balance Sheet reflect the true position of the business/activity undertaken by any firm. The contention that this was only a clerical mistake, which was not rectified, despite having known this error during the course of filing a income tax is difficult to believe. Had it been a clerical mistake as is being contended, the appellant could have taken necessary steps to correct the same by a rectification entry. What is further surprising and difficult to believe is that no steps were taken to correct the same, which creates a credible doubt about the net profit disclosed to the Income Tax authorities during the course of filing the returns.

9. The averments raised by the appellant hit at the heart of the calculation. Though these were raised before the adjudicating authority, the same were ignored. The documents such as Income tax returns, needs to be verified to ascertain its authenticity.

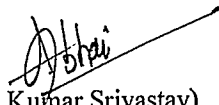
10. The impugned show cause notice dated 26.09.2013, indicates that there was a credit entry to the extent of Rs.35,88,352/- in the bank account during 2008-09. However, no discussion in this regard was made in the impugned order by the adjudicating authority. The appellant's submission is that it is a totaling error. The averment in respect of bank account needs to be gone into thoroughly, and a finding needs to be recorded in this respect.



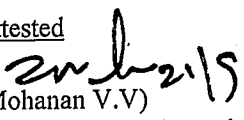
11. In the circumstances, in view of foregoing discussion, I feel that verification of documents is necessary to ascertain its genuineness. Therefore, I remand the case to the adjudicating to decide the matter afresh after considering the facts as discussed in paras *supra*. The appellant is free to submit further records/documents, if any, to establish his claim. While deciding the issue the adjudicating authority should bear in mind that I have not expressed my opinion on the merits of the case.

11. The case is disposed of accordingly.

Date: 19/09/2016

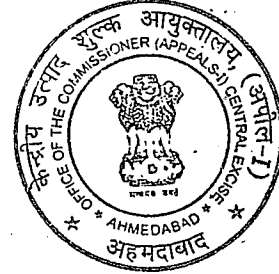
  
(Abhai Kumar Srivastav)  
Commissioner (Appeals-I)  
Central Excise, Ahmedabad.

Attested

  
(Mohanan V.V)  
Superintendent (Appeals-I)  
Central Excise, Ahmedabad

R.P.A.D

To  
M/s M. R. Education  
Plot No.720, 1<sup>st</sup> floor,  
Shopping Centre, Sector -22  
Gandhinagar.



Copy to:-

1. The Chief Commissioner, Central Excise Zone, Ahmedabad.
2. The Commissioner, Central Excise, Ahmedabad-III
3. The Addl./Joint Commissioner, (Systems), Central Excise, Ahmedabad-III
4. The Dy. / Asstt. Commissioner, Central Excise, S.T Division, Gandhinagar, Ahmedabad-III
5. Guard file.
6. P.A.

