

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(CTC)33/STC-III/2015-16/Appeal-I

ख अपील आदेश संख्या : Order-In-Appeal No.: AHM-EXCUS-003-APP-219-16-17  
दिनांक Date 23.01.2017 जारी करने की तारीख Date of Issue 21/12

श्री उमाशंकर आयुक्त (अपील-I) केन्द्रीय उत्पाद शुल्क अहमदाबाद द्वारा पारित

Passed by Shri Uma Shankar 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-45/2015 dated :04.09.2015  
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. TOP ACADEMY**

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 :-

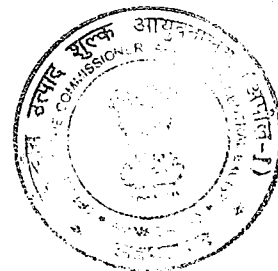
वित्तीय अधिनियम, 1994 की धारा 86 के अंतर्गत अपील को निम्न के पास की जा सकती:-  
Under Section 86 of the Finance Act 1994 an appeal lies to :-

पश्चिम क्षेत्रीय पीठ सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण ओ.20, न्यू मैन्टल हास्पिटल कम्पाउण्ड, मेघाणी 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, 1984 की धारा 34फ के अंतर्गत वित्तीय(संख्या-2) अधिनियम 2014(2014 की संख्या 29) 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, बशर्त 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 बशर्त 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 होंगे।

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,

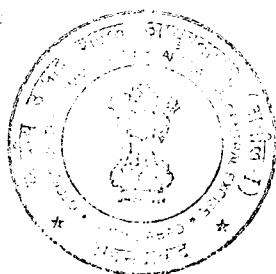
Under Central Excise and Service Tax, "Duty demanded" shall include:

- (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 s.dWR मे., 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."



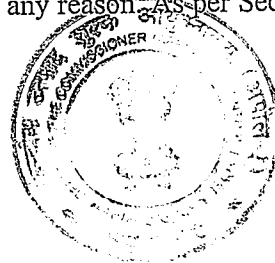
## ORDER IN APPEAL

This appeal has been filed by M/s Top Academy, Gandhinagar (hereinafter referred to as "the appellant") against Order-in-Original No.GNR-STX-DEM-DC-45/2015 dated 04.09.2015 (for brevity-impugned order) passed by the Deputy Commissioner, Service Tax Division, Gandhinagar (for brevity-adjudicating authority).

2. Briefly stated, the appellant is providing commercial coaching and training services. The jurisdictional Central Excise Officers has 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 during the year 2010-11 and 2011-12; 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 relevant period. Scrutiny of documents pertaining to the relevant periods revealed that though the appellant has received taxable income of Rs. 47,91,150/- during the relevant period, they had failed to discharge service tax liability and also failed to file ST-3 returns. Therefore, a show cause notice dated 12.03.2015, demanding service tax of Rs.3,90,488/- along with interest and proposing penalty on the appellant, was issued. This notice was adjudicated vide the impugned order, wherein the adjudicating authority has confirmed the demand of 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 for filing ST-3 returns under Rule 7C of Service Tax Rules, 2004.

3. Being aggrieved, the appellant has filed the present appeal on the grounds that they were received only Rs.36,71,150/- during the relevant period and an amount of Rs.11,20,000/- was not received by them, instead the other group entity named M/s Top Education has received the said amount for the year under consideration; that it was the inadvertent mistake of the staff that the receipts for the said consideration amounting to Rs.11,20,000/- were issued in the name of the appellant. The case against M/s Top Education was adjudicated by the Joint Commissioner and he has already considered the said amount while assessing taxable value of the said unit for the year 2011-12. The appellant has not raised any service tax on the invoices and not collected separately from the students, thus they are entitled for the cum-duty benefit while charging service tax. The appellant further submitted that the penalty is excessive and disproportionate; that when there is one transaction of non- payment, imposing separate penalty for each count is not justifiable.

4. Personal hearing in the matter was granted on 23.05.2016, 08/09.08.2016, 17.10.2016, 28.11.2016, 20.12.2016 and 04.01.2016. The appellant neither appeared nor requested for any adjournment for the personal hearing granted till 20.12.2016, however, Shri Vismay S Patel, authorized representative of the appellant appeared on 04.01.2017 and requested for an adjournment of personal hearing without any reason. As per Section



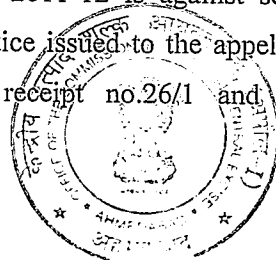
35 of the Central Excise Act, 1944, the appellate authority, if sufficient cause is shown at any stage of hearing of an appeal, grant time, from time to time, to the parties and adjourn the hearing for reasons to be recorded in writing; provided that no such adjournment shall be granted more than three times. In the instant case, I observe that the appellant was given ample opportunity of natural justice for representing their case; however, they failed to avail the same. In the circumstances, I do not find any merit to grant further chance of personal hearing in the matter and accordingly the case is taken for decision ex-parte.

5. I have carefully gone through the facts of the case and submissions made by the appellant in the appeal memorandum. The limited issue to be decided in the instant case is relating to liability of service tax on taxable income amounting to Rs.47,91,150/- received by the appellant towards tuition fees during 2010-11 and 2011-12.

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. At the outset, I observe in the instant case that 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 put forth by the appellant is that an amount of Rs.11,20,000/- included in the total taxable value was not received by them during the period under consideration but it was received by their group unit viz., M/s Top Education; that the said amount has already been considered by the Joint Commissioner of Central Excise, Ahmedabad-III, while adjudicating the case against the said unit. The appellant has further contended that they neither raised any service tax on the invoices nor collected separately from the students, thus, they are entitled for the cum-duty benefit while charging service tax.

8. I observe that the adjudicating authority has discussed in detail regarding the disputed amount in the impugned order. He has contended that as per receipt No.26/1 and 26/2 an amount Rs.11,80,000/- was received by the appellant during 2011-12 which was not tallying with the said disputed amount of Rs.11,20,000/- appearing in the annexure B of the show cause notice issued to M/s Top Education; that no reference of seized document viz., sr.no.26 has given either in the annexure or in the show cause notice issued to M/s Top Education. The adjudicating authority clearly contended that the disputed amount of Rs.11,20,000/- shown during 2011-12 is against school of achievers, whereas as per panchnama to show cause notice issued to the appellant, the total amount collected from various students vide receipt no.26/1 and 26/2 is



10

Rs.11,80,000/-. Further, I observe that it is an admitted fact by the appellant that the receipt book no.26/1 and 26/2 was issued by them during 2011-12. The contention that it was only a mistake of the staff that the receipts for the said consideration were issued in the name of the appellant is difficult to believe, looking into the facts and documental evidences available on record, especially the appellant has not submitted any backing proof. The contention that while adjudicating the case against M/s Top Education, the Joint Commissioner has already considered the said amount is also not true and not acceptable as the amount disputed by the appellant is in any way tallying with the amount received by the appellant during the relevant period. In the circumstances, I do not find any merit in the argument of the appellant. Therefore, I uphold the decision of the adjudicating authority in this aspect.

9. As regards the contention of cum -duty benefit raised by the appellant, I observe that the Commissioner (Appeals), in the case of M/s Top Education, vide OIA No.AHM-EXCUS-003-APP-128-14-15 dated 19.12.2014 has already decided the issue. Relevant para is reproduced below:

*"I have carefully gone through these case laws and find that facts and circumstances of all these case laws are not akin to the present case. Had it not been preventive action by the department, the payment of Service Tax would have gone unheeded by the appellant; hence benefit of cum-duty can not be extended to the appellant. In this regard, I rely upon the decision of Principal Bench of Hon'ble Tribunal, Delhi in case of M/s Pinkline Exim P. Ltd., V/s C.C.E, Jaipur-I, reported at 2011(268) E.L.T 369 (Tri- Del.) which is pari material to the instant case. The Hon'ble Tribunal has held that benefit of cum-duty price can not be extended in the cases of deliberate duty evasion by clandestine clearances. The relevant extract of the same is reproduced as under:-*

*"4.3 It has been pleaded that in accordance with the ratio of Hon'ble Supreme Court's judgment in case of CCE, Delhi v. Maruti Udyog Ltd. reported in 2002 (141) E.L.T. 3 (S.C.) the price of the fabrics on which duty has been demanded, must be treated as cum duty price and assessable value must be calculated by permitting abatement of duty from the price. Tribunal in cases of Asian Alloys Ltd. v. CCE-III reported in 2006 (203) E.L.T. 252 (Tri. - Del.) and Sarla Polyester Ltd. v. CCE, reported in 2008 (222) E.L.T. 376 (Tri. - Ahmd.) has held that the ratio of Hon'ble Supreme Court's judgment in case of CCE, Delhi v. Maruti Udyog Ltd. is not applicable to the cases of deliberate duty evasion by clandestine clearances. Therefore this plea of the Appellant is also not acceptable."*

10. In view of the above discussion, the appellant is liable for payment of service tax for the disputed period under the category of "Commercial Coaching & Training" under Section 65(26) of Finance Act, 1994 and is taxable under Section 65(105)(zxc) of the FA. As duty was not discharged within stipulated time, interest is payable under section 75 of the Finance Act, 1994.

11. I find that the adjudicating authority has imposed penalty under Section 77 (1) (a), 77 (2) of the Finance Act, 1994, under Rule 7C of Service Rule 1994 and also penalty under Section 78 of the FA. The penalties imposed under the said Sections appear to be apt in the light of the circumstances of the case.



12. In this backdrop, I reject the appeal filed by the appellant and uphold the impugned order-passed by the adjudicating authority. The appeal stands disposed of accordingly.

*Uma Shanker*

(Uma Shanker)  
Commissioner (Appeals-I).  
Central Excise, Ahmedabad.

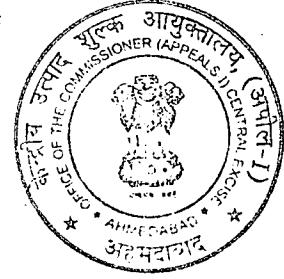
Attested

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

Date: 23/01/2017

BY R.P.A.D

To,  
M/s Top Academy,  
Plot No.720  
1<sup>st</sup> Floor, Shopping Centre,  
Sector-22, Gandhinagar  
Gujarat.



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, ST Division-Gandhinagar.
5. Guard file.
6. P.A file.