



आयुक्त का कार्यालय
Office of the Commissioner
केंद्रीय जीएसटी, अपील अहमदाबाद आयुक्तालय
Central GST, Appeals Ahmedabad Commissionerate
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By SPEED POST

DIN:- 20231264SW0000333BFE

(क)	फाइल संख्या / File No.	GAPPL/COM/STP/3019/2023-APPEAL / १०७३-७७
(ख)	अपील आदेश संख्या और दिनांक / Order-In-Appeal No. and Date	AHM-EXCUS-003-APP-144/2023-24 and 29.11.2023
(ग)	पारित किया गया / Passed By	श्री ज्ञानचंद जैन, आयुक्त (अपील्स) Shri Gyan Chand Jain, Commissioner (Appeals)
(घ)	जारी करने की दिनांक / Date of issue	05.12.2023
(ङ)	Arising out of Order-In-Original No. AHM-CEX-003-REASSIGNED-AC-RRK-26-2022-23 dated 27.03.2023 passed by the Assistant Commissioner, CGST, Division-Himmatnagar, Gandhinagar Commissionerate	
(च)	अपीलकर्ता का नाम और पता / Name and Address of the Appellant	M/s Top Education Consultant Pvt. Ltd., Plot No.720, Shopping Centre, Sector-22, Gandhinagar, Gujarat-382022

कोई व्यक्ति इस अपील-आदेश से असंतोष अनुभव करता है तो वह इस आदेश के प्रति यथास्थिति नीचे बताए गए सक्षम अधिकारी को अपील अथवा पुनरीक्षण आवेदन प्रस्तुत कर सकता है, जैसा कि ऐसे आदेश के विरुद्ध हो सकता है।

Any person aggrieved by this Order-in-Appeal may file an appeal or revision application, as the one may be against such order, to the appropriate authority in the following way.

भारत सरकार का पुनरीक्षण आवेदन:-

Revision application to Government of India:

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1994 की धारा अतत नीचे बताए गए मामलों के बारे में पूर्वोक्त धारा को उप-धारा के प्रथम परन्तुक के अंतर्गत पुनरीक्षण आवेदन अधीन सचिव, भारत सरकार, वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, संसद मार्ग, नई दिल्ली: 110001 को की जानी चाहिए :-

A revision application lies to the Under Secretary, to the Govt. of India, Revision Application Unit Ministry of Finance, Department of Revenue, 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi - 110 001 under Section 35EE of the CEA 1944 in respect of the following case, governed by first proviso to sub-section (1) of Section-35 ibid :-

(क) यदि माल की हानि के मामले में जब ऐसी हानिकार खाने से किसी भण्डागार या अन्य कारखाने में या किसी भण्डागार से दूसरे भण्डागार में माल ले जाते हुए मार्ग में, या किसी भण्डागार या भण्डार में चाहे वह किसी कारखाने में या किसी भण्डागार में हो माल की प्रक्रिया के दौरान हुई हो।

In case of any loss of goods where the loss occur in transit from a factory to a warehouse or to another factory or from one warehouse to another during the course of processing of the goods in a warehouse or in storage whether in a factory or in a warehouse.



(ख) भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित माल पर या माल के विनिर्माण में उपयोग शुल्क कच्चे माल पर उत्पादन शुल्क के रिबेट के मामलों में जो भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित है।

In case of rebate of duty of excise on goods exported to any country or territory outside India of on excisable material used in the manufacture of the goods which are exported to any country or territory outside India.

(ग) यदि शुल्क का भुगतान किए बिना भारत के बाहर (नेपाल या भूटान को) निर्यात किया गया माल हो।

In case of goods exported outside India export to Nepal or Bhutan, without payment of duty.

(घ) अंतिम उत्पादन की उत्पादन शुल्क के भुगतान के लिए जो ड्यूटी क्रेडिट मान्य की गई है और ऐसे आदेश जो इस धारा एवं नियम के मुताबिक आयुक्त, अपील के द्वारा पारित वो समय पर या बाद में वित्त अधिनियम (नं 2) 1998 धारा 109 द्वारा नियुक्त किए गए हों।

Credit of any duty allowed to be utilized towards payment of excise duty on final products under the provisions of this Act or the Rules made there under and such order is passed by the Commissioner (Appeals) on or after, the date appointed under Sec.109 of the Finance (No.2) Act, 1998.

(2) केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001 के नियम 9 के अंतर्गत विनिर्दिष्ट प्रपत्र संख्या ईए-8 में दो प्रतियों में, प्रेषित आदेश के प्रति आदेश प्रेषित दिनांक से तीन मास के भीतरमूल-आदेश एवं अपील आदेश की दो-दो प्रतियों के साथ उचित आवेदन किया जाना चाहिए। उसके साथ खाता इ का मुख्य शीर्ष के अंतर्गत धारा 35-इ में निर्धारित फी के भुगतान के सबूत के साथ टीआर-6 चालान की प्रति भी होनी चाहिए।

The above application shall be made in duplicate in Form No. EA-8 as specified under Rule, 9 of Central Excise (Appeals) Rules, 2001 within 3 months from the date on which the order sought to be appealed against is communicated and shall be accompanied by two copies each of the OIO and Order-In-Appeal. It should also be accompanied by a copy of TR-6 Challan evidencing payment of prescribed fee as prescribed under Section 35-EE of CEA, 1944, under Major Head of Account.

(3) रिविजन आवेदन के साथ जहाँ संलग्न रकम एक लाख रुपये या उससे कम होतो रुपये 200/- फीस भुगतान की जाए और जहाँ संलग्नरकम एक लाख से ज्यादा हो तो 1000/- की फीस भुगतान की जाए।

The revision application shall be accompanied by a fee of Rs.200/- where the amount involved is Rupees One Lac or less and Rs.1,000/- where the amount involved is more than Rupees One Lac.

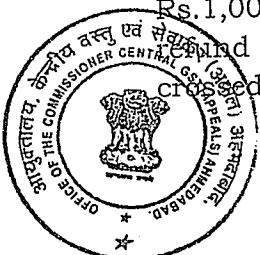
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवा कर अपीलीय न्यायाधिकरण के प्रति अपील:-
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1944 की धारा 35-बी/35-इ के अंतर्गत:-
Under Section 35B/ 35E of CEA, 1944 an appeal lies to :-

(2) उक्तलिखित परिच्छेद में बताए अनुसार के अलावा की अपील, अपीलो के मामले में सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, अहमदाबाद में 2nd माला, बहुमाली भवन, असरवा, गिरधरनागर, अहमदाबाद-380004।

To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at 2nd floor, Bahumali Bhawan, Asarwa, Girdhar Nagar, Ahmedabad: 380004. In case of appeals other than as mentioned above para.

The appeal to the Appellate Tribunal shall be filed in quadruplicate in form EA-3 as prescribed under Rule 6 of Central Excise(Appeal) Rules, 2001 and shall be accompanied against (one which at least should be accompanied by a fee of Rs.1,000/-, Rs.5,000/- and Rs.10,000/- where amount of duty / penalty / demand / is upto 5 Lac, 5 Lac to 50 Lac and above 50 Lac respectively in the form of crossed bank draft in favour of Asstt. Registrar of a branch of any nominate public



sector bank of the place where the bench of any nominate public sector bank of the place where the bench of the Tribunal is situated.

(3) यदि इस आदेश में कई मूल आदेशों का समावेश होता है तो प्रत्येक मूल आदेश के लिए फीस का भुगतान उपर्युक्त ढंग से किया जाना चाहिए इस तथ्य के होते हुए भी कि लिखा पढी कार्य से बचने के लिए यथास्थिति अपीलीय न्यायाधिकरण को एक अपील या केन्द्रीय सरकार को एक आवेदन किया जाता है।

In case of the order covers a number of order-in-Original, fee for each O.I.O. should be paid in the aforesaid manner notwithstanding the fact that the one appeal to the Appellant Tribunal or the one application to the Central Govt. As the case may be, is filled to avoid scriptoria work if excising Rs. 1 lacs fee of Rs.100/- for each.

(4) न्यायालय शुल्क अधिनियम 1970 यथा संशोधित की अनुसूची -1 के अंतर्गत निर्धारित किए अनुसार उक्त आवेदन या मूलआदेश यथास्थिति निर्णयन प्राधिकारी के आदेश में से प्रत्येक की एक प्रतिपर रु 6.50 पैसे का न्यायालय शुल्क टिकट लगा होना चाहिए।

One copy of application or O.I.O. as the case may be, and the order of the adjournment authority shall a court fee stamp of Rs.6.50 paise as prescribed under scheduled-I item of the court fee Act, 1975 as amended.

(5) इन ओर संबंधित मामलों को नियंत्रण करने वाले नियमों की ओर भी ध्यान आकर्षित किया जाता है जो सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्याविधि) नियम, 1982 में निहित है।

Attention is invited to the rules covering these and other related matter contended in the Customs, Excise & Service Tax Appellate Tribunal (Procedure) Rules, 1982.

(6) सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) एके प्रति अपीलो के मामले में कर्तव्यमांग (Demand) एवं दंड (Penalty) का 10% पूर्व जमा करना अनिवार्य है। हालांकि, अधिकतम पूर्व जमा 10 करोड़ रुपए है। (Section 35 F of the Central Excise Act, 1944, Section 83 & Section 86 of the Finance Act, 1994)

केन्द्रीय उत्पाद शुल्क और सेवाकर के अंतर्गत, शामिल होगा कर्तव्य की मांग (Duty Demanded)।

- (1) खंड (Section) 11D के तहत निर्धारित राशि;
- (2) लिया गलत सेनवैट क्रेडिट की राशि;
- (3) सेनवैट क्रेडिट नियमों के नियम 6 के तहत देय राशि।

यह पूर्व जमा 'लंबित अपील' में पहले पूर्व जमा की तुलना में 'अपील' दाखिल करने के लिए पूर्व शर्त बना दिया गया है।

For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (Section 35 C (2A) and 35 F of the Central Excise Act, 1944, Section 83 & Section 86 of the Finance Act, 1994).

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.

(6) (i) 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।

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, penalty, where penalty alone is in dispute."



ORDER IN APPEAL

M/s. Top Education Consultant Pvt. Ltd., Plot No-720, Shopping Centre, Sector-22, Gandhinagar, Gujarat-382022 (hereinafter referred to as '*the appellant*') have filed the present appeal against the Order-in-Original No. AHM-CEX-003-Re-Assigned-AC-RRK-26—2022-23 dated 27.03.2023 (in short '*impugned order*') passed by the Assistant Commissioner, Central GST, Division-Gandhinagar, Gandhinagar Commissionerate (hereinafter referred to as '*the adjudicating authority*'). The appellant were engaged in providing taxable services of Coaching Class and Computer Training and were registered under Service Tax Registration No. AACCT4982HST001.

2. The facts of the case, in brief, are that based on the data received from the Central Board of Direct Taxes (CBDT) for the F.Y. 2015-16 and 2016-17, discrepancy was noticed in the income reflected under the "Sales / Gross Receipts from Services (Value from ITR)" or "Total Amount paid / credited under Section 194C, 194I, 194H, 194J (Value from Form 26AS)" of the Income Tax Act, 1961 vis-a vis the value of taxable service reflected in the ST-3 return. Letters were, therefore, issued to the appellant to provide the details of the services provided during the F.Y. 2015-16 & 2016-17 and explain the reasons for non-payment of tax on the differential income and to provide the certified documentary evidences for the same. The appellant neither provided the documents nor submitted any reply justifying the non-payment of service tax on such receipts. Therefore, the service tax was calculated on the differential income reflected, on which no tax was paid.

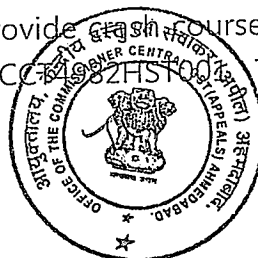
<i>F.Y.</i>	<i>Value from ITR or Value of Form 26AS</i>	<i>Value as per ST-3</i>	<i>Differential Income</i>	<i>Service tax rate</i>	<i>Service Tax Payable</i>
2015-16	75,20,331/-	44,92,694/-	30,27,637/-	14.5%	4,39,007/-
2016-17	64,72,865/-	0	64,72,865/-	15%	9,70,930/-
				Total	14,09,937/-

2.1 A Show Cause Notices (SCN) bearing No. V/04-03/O&A/Tech/2021-22 dated 04.06.2021 was issued to the appellant proposing recovery of service tax amount of Rs.14,09,937/- along with interest; under Section 73(1) and Section 75 of the Finance Act, 1994. Imposition of penalties under Section 77(2), 77(1)(c) and Section 78 of the Finance Act, 1994 were also proposed.

3. The said SCN was adjudicated vide the impugned order wherein the service tax demand of Rs. 14,09,937/- was confirmed alongwith interest. Penalty of Rs. 10,000/- each under Section 77(1)(c) and Section 77(2) was imposed. Penalty of Rs. 14,09,937/- was also imposed under Section 78 of the Finance Act.

4. Being aggrieved with the impugned order passed by the adjudicating authority, the appellant have preferred the present appeal, on the grounds elaborated below:-

- The appellant is engaged in providing coaching to the students of standard from VIII to XII of CBSE and GSEB and also provide crash courses for UT, JEE, AIEE etc. and registered under service tax vide AACCT4982HST001. The revenue earned by



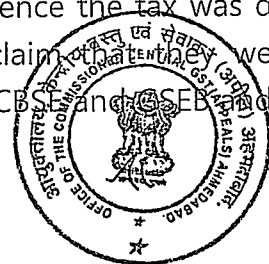
the appellant during the subject period also includes revenue from sale of books to the students. Sale of books being trading activity is covered under negative list prescribed vide section 66D of The Finance Act, 1994. Hence, service tax is not leviable on such revenue.

- Figures from 26AS/Income Tax Return cannot be used for determining service tax liability unless there is conclusive evidence as to the said is on account of providing taxable service. Since the services provided by the educational institution to its students is exempted under Sr. No. 9(a) of Mega Exemption Notification 25/2012 dated 20th June, 2012, the appellant was not liable to pay service tax.
- Mere failure to pay tax cannot be considered as mis-statement or suppression of facts unless the intent to evade the tax is established. Extended period cannot be invoked when the appellant is filing periodical ST-3 return.
- Even if it is assumed that the service provided by appellant is taxable, the appellant is eligible for the cum-tax benefit. The appellant has not charged and collected service tax on the amount charged from the service recipient.
- As service tax is not required to be paid, no interest under Section 75 can be demanded from the appellant. It is a well-settled principle of law that where there is no demand of duty, interest and penalty cannot be imposed.
- Penalty under Section 77 is not sustainable as the appellant has not paid the tax owing to exemption provided vide Notification 25/2012 & 33/2012.
- Suppression of facts is not there in the subject case of the appellant. Therefore, the proviso to Section 73(1) is not applicable. Since, proviso to Section 73(1) is not applicable hence, penalty under Section 78 is not imposable.

5. Personal hearing in the case was held on 13.10.2023. Ms. Labdhi Shah, Chartered Accountant appeared and reiterated the submissions made in appeal memorandum and of the written submissions and requested to set-aside the impugned order and allow the appeal.

6. I have carefully gone through the facts of the case, grounds of appeal, submissions made in the appeal memorandum and documents available on record. The issue to be decided in the present appeal is whether the impugned order passed by the adjudicating authority, confirming the service tax demand of **Rs.14,09,937/-** along with interest and penalty, in the facts and circumstance of the case, is legal and proper or otherwise. The demand pertains to the period F.Y 2015-16 and 2016-17.

6.1 The notice alleges that the appellant has declared less taxable value in the ST-3 return compared to the income declared in the ITR. Hence the tax was demanded on the differential income not reflected. The appellant claim that they were rendering coaching to the students of standard from VIII to XII of CBSE and ICSE and also provide



crash courses for UT, JEE, AIEE etc which is exempted under Sr. No. 9(a) of Mega Exemption Notification 25/2012 dated 20th June, 2012. They submitted Profit & Loss Account page showing the income particulars and particulars of expenses made by them. From the Profit & Loss account, I find that the appellant has shown the income of Rs.76,20,627/- and Rs. 64,72,865/- for the F.Y. 2015-16 and F.Y. 2016-17 respectively. They submitted the expense ledger but the income ledger was not produced. They also submitted invoices to show the expenses made on printing & stationery. They claim that the income received was from trading or sale of books. However, the appellant could not produce any documents justifying such claim.

6.2 It is observed that in terms of **serial no. 9(a)** of the Notification No. 25/2012-ST dated 20.6.2012, the services provided to or by an educational institution in respect of education exempted from service tax, by way of (a) *auxiliary educational services*; or (b) *renting of immovable property*; is exempted from service tax. The terms 'auxiliary educational services' is defined in para-2(f) of the said notification as;

f) "auxiliary educational services" means any services relating to imparting any skill, knowledge, education or development of course content or any other knowledge – enhancement activity, whether for the students or the faculty, or any other services which educational institutions ordinarily carry out themselves but may obtain as outsourced services from any other person, including services relating to admission to such institution, conduct of examination, catering for the students under any mid-day meals scheme sponsored by Government, or transportation of students, faculty or staff of such institution;

6.3 The terms 'educational institution' is defined in clause (oa) of Notification No.25/2012-ST (inserted vide Notification No. 06/2014-ST dated 11.07.2014 as;

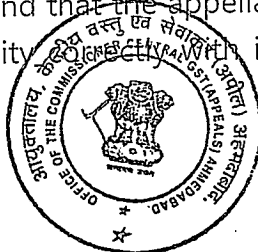
(b) after clause (o), the following clause shall be inserted, namely :-

'(oa) "educational institution" means an institution providing services specified in clause (l) of section 66D of the Finance Act, 1994 (32 of 1994).';

I find that the appellant has rendered coaching classes to school students and crash courses for UT, JEE, AIEE etc hence not covered under the above definition of 'education institute'. The appellant is a coaching institute and not an educational institute recognized / authorized to provide any education recognized by law. Consequently, I find that the case of appellant is not covered under **serial no. 9(a)** of the Notification No. 25/2012-ST dated 20.6.2012. The appellant therefore are liable to pay service tax on the differential income of Rs. 14,09,937/- as the same is legally sustainable.

7. When the demand sustains there is no escape from interest liability. Hence, I find that the same is recoverable.

8. I find that the imposition of penalty under Section 78 is also justifiable as it provides penalty for suppressing the value of taxable services. Hon'ble Supreme Court in case of *Union of India v/s Dharamendra Textile Processors* reported in [2008 (231) E.L.T. 3 (S.C.)], concluded that the section provides for a mandatory penalty and leaves no scope of discretion for imposing lesser penalty. I find that the appellant was rendering a taxable service but failed to assess their tax liability with intent to evade the



taxes. The appellant deliberately suppressed the income received from the taxable services in their ST-3 returns. This act thereby led to suppression of the value of taxable service and such non-payment of service tax undoubtedly brings out the willful mis-statement and fraud with intent to evade payment of service tax. If any of the circumstances referred to in Section 73(1) are established, the person liable to pay tax would also be liable to pay a penalty equal to the tax so determined above.

9. As regards, the penalty of Rs.10,000/- imposed each under Section 77 (1)(c) and Section 77(2) is concerned; I find the same was imposed as the appellant did not provide the details or information called for the F.Y. 2015-16 & 2016-17. Further, they also contravened the provisions of Section 67, Section 68 and Section 70, hence are liable for penalty under section 77(2) also.

10. In view of the above discussion, the impugned order is upheld.

11. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।
The appeal filed by the appellant stands disposed off in above terms.

[Signature]
(ज्ञानचंद जैन)
आयुक्त (अपील्स)

Date: 29.11.2023

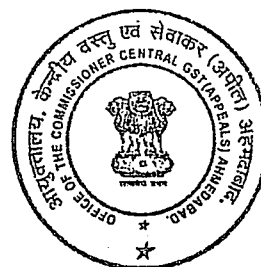
Attested

[Signature]

(रेखा नायर)

अधीक्षक (अपील्स)

केंद्रीय जी. एस. टी, अहमदाबाद



By RPAD/SPEED POST

To,

M/s. Top Education Consultant Pvt. Ltd.,
Plot No-720, Shopping Centre,
Sector-22, Gandhinagar,
Gujarat-382022

- Appellant

The Assistant Commissioner
CGST, Division- Gandhinagar,
Gandhinagar

- Respondent

Copy to:

1. The Principal Chief Commissioner, Central GST, Ahmedabad Zone.
2. The Commissioner, CGST, Gandhinagar.
3. The Assistant Commissioner (System), CGST, Appeals, Ahmedabad.
4. Guard File.

(For uploading the OIA)



