



सत्यमेव जयते

## केंद्रीय कर आयुक्त (अपील)

O/O THE COMMISSIONER (APPEALS), CENTRAL TAX,  
केंद्रीय कर शुल्कभवन,  
सातवीं मंजिल, पोलिटेकनिक के पास,  
आम्बावाडी, अहमदाबाद-380015



7<sup>th</sup> Floor, Central Excise Building,  
Near Polytechnic,  
Ambavadi, Ahmedabad-380015

☎ : 079-26305065

टेलिफैक्स : 079 - 26305136

क फाइल संख्या : File No : V2(ST)76/A-II/2017-18 / 436-40  
ख अपील आदेश संख्या : Order-In-Appeal No. AHM-EXCUS-002-APP-242-17-18  
दिनांक Date : 29-12-2017 जारी करने की तारीख Date of Issue 22/01/18

श्री उमा शंकर, आयुक्त (अपील) द्वारा पारित

Passed by Shri Uma Shanker Commissioner (Appeals)

ग Arising out of Order-in-Original No SD-05/9/DKJ/DC/Division-II/2016-17 Dated 30.03.2017 Issued by Assistant Commr STC, Service Tax, Div-II, Ahmedabad

ध अपीलकर्ता का नाम एवं पता  
Name & Address of The Appellants

### M/s. Altus Learning Pvt Ltd Ahmedabad

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 मेंटल हास्पिटल कम्पाउण्ड, मेधाणी नगर, अहमदाबाद-380016

The West Regional Bench of Customs, Excise, Service Tax Appellate Tribunal (CESTAT) at O-20, New Mental Hospital Compound, Meghani Nagar, 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 जिरा स्थान में न्यायाधिकरण का न्यायाधीश स्थित है, वहाँ के नाभित सार्वजनिक क्षेत्र बैंक के न्यायाधीश 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 तथा 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 accompany ed 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 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



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-धाराओं एवं (2ए) के अंतर्गत अपील सेवाकर नियमावली, 1994 के नियम 9 (2ए) के अंतर्गत निर्धारित फॉर्म एस.टी.-7 में की जा सकेगी एवं उसके साथ आयुक्त, केन्द्रीय उत्पाद शुल्क (अपील) के आदेश की प्रतियों (OIA) (उसमें से प्रमाणित प्रति होगी) और अपर आयुक्त, सहायक / उप आयुक्त अथवा A219K केन्द्रीय उत्पाद शुल्क, अपीलीय न्यायाधिकरण को आवेदन करने के निदेश देते हुए आदेश (OIO) की प्रति भेजी होगी।

(iii) The appeal under sub section (2A) of the section 86 the Finance Act 1994, shall be filed in Form 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 (Appeals)(OIA)(one of which shall be a certified copy) and copy of the order passed by the Addl. / Joint or Dy. / Asstt. Commissioner or Superintendent of Central Excise & Service Tax (OIO) 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 adjudication 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 न्यायाधिकरण (सीस्टेट) के प्रति अपीलों के मामलों में केन्द्रीय उत्पाद शुल्क अधिनियम, 1994 की धारा 39क 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, 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 अर्जी 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,

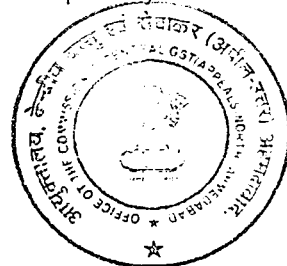
Under Central Excise and Service Tax, "Duty demanded" shall include:

- (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(1) 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।

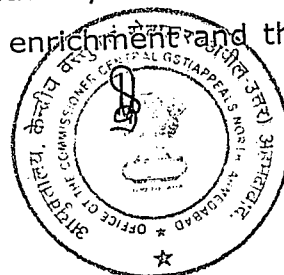
4(1) In view of above, an appeal against this order shall lie before the Tribunal on payment of 10% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute.



**ORDER-IN-APPEAL**

M/s. Altus Learning Pvt. Ltd., (*hereinafter referred to as 'appellant'*), D-1001, Titanium Square, Thaltej Cross Road, Thaltej, Ahmedabad-380054, holding Service Tax Registration No. AADCC5355QSD001 for providing taxable services viz. (i) Management of Business Consultant Service (2) Rent-a-Cab Scheme Operator Service (3) Manpower Recruitment Supply Agency Service (iv) Commercial Training or Coaching Service (v) Business Auxiliary Service (vi) Franchisee Service (vii) Intellectual Property Rights Services and (viii) Renting of Immovable Property Service, and are engaged in providing services to M/s. Calorx Education and Research Foundation (*hereinafter referred to as M/s. CERF*), a subsidiary company of the appellant, for education purpose in respect of the education institutions run by them. The appellant have filed the present appeal on 29.05.2017, against the Order-in-Original No. SD-05/19/DKJ/DC/Division-II/2016-17 dated 30.03.2017 (*hereinafter referred to as 'impugned order'*) passed by the Deputy Commissioner, Service Tax, Division-V, Ahmedabad (*hereinafter referred to as 'adjudicating authority'*), confirming the demand amounting to Rs.8,52,190/-, alongwith interest under Section 75 of the Finance Act, 1994, for recovery of erroneously sanctioned refund vide OIO No. SD-01/Refund/13/AC/Altus/14-15 dt.01.05.2014 (the Refund order).

2. The facts of the case, in brief, are that the appellant filed an application on 07.10.2013, with the Assistant Commissioner, Service Tax, Division-I, Ahmedabad, for refund claim of Rs.9,22,488/-, on account of Service Tax paid on providing "Educational Auxiliary Services" which is exempted vide Notification No. 25/2012-ST dt.20.06.2012 (Sl. No. 9) for the period from 1<sup>st</sup> July, 2012 to 30<sup>th</sup> September, 2012. The appellant vide a subsequent letter dt. 26.11.2013, rectified their claim of Refund to Rs.8,66,058/-, instead of Rs. 9,22,488/-. On verification of the refund claim, it was noticed that the claimant had provided both exempted as well as taxable services. The Adjudicating Authority vide OIO No. SD-01/Refund/13/AC/Altus/14-15 dt.01.05.2014, sanctioned the refund claim of the appellant amounting to Rs.8,52,190/-, rejecting an amount of Rs.13,868/-. However, during test check of the records of the Department by the office of the Principal Director of Audit (Central), Ahmedabad (CERA), they observed that the refund claim so sanctioned by the Assistant Commissioner was not admissible to the appellant mainly on the grounds of unjust enrichment. As per the observation of CERA, it was noticed that while deciding the said refund claim, the sanctioning authority had relied on the certificate of the Chartered Accountant for unjust enrichment and that the



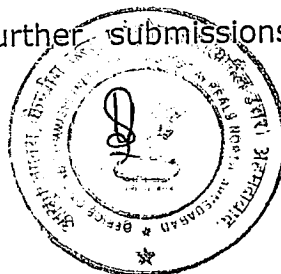
said certificate was not sufficient to discharge the burden cast upon to prove that incidence of duty has not been passed on to their customers. Therefore, the appellant was issued a Show Cause Notice dt.23.06.2015, as to why the refund claim of Rs.8,52,190/-, erroneously sanctioned to them vide OIO No. SD-01/Refund/13/AC/Altus/14-15 dt.01.05.2014, should not be recovered alongwith interest in terms of Section 73 of the Finance Act, 1994, read with Section 11B of the Central Excise Act, 1944, as made applicable to Service Tax under Section 83 of the Finance Act, 1994, and Rules made there under, in as much as no documentary evidence is produced for claiming the refund.

3. The appellant argued that the question of unjust enrichment arises only when a person has passed on the service tax to the service receiver and also claimed the refund from the service tax department simultaneously; that in their case, the invoices in respect of which refund was claimed and receipt were issued only for the service portion without adding in to it the service tax element. As such, they argued that the point of unjust enrichment in this case is not sustainable. The Adjudicating Authority vide OIO No. SD-05/19/DKJ/DC/Division-II/2016-17 dt.30.03.2017, held that the appellant had not fulfilled the condition relating to crossing the bar of unjust enrichment and hence ordered for recovery of Rs.8,52,190/-, from the appellant, in terms of Section 73 of the Finance Act, 1994, read with Section 11B of the Central Excise Act, 1944, as made applicable to Service Tax under Section 83 of the Finance Act, 1994, alongwith interest at the appropriate rate in terms of Section 75 of the Finance Act, 1994.

4. Being aggrieved by the said OIO dt. 30.03.2017, the appellant has filed this appeal before me on the grounds that (i) the Adjudicating Authority instead of deciding the issue on the basis of provisions of law and facts, gave a biased view on the grounds of unjust enrichment; (ii) the Adjudicating Authority did not record any discussion or finding on the contentions raised in the appellant's reply; (iii) when the department has not preferred an appeal, their contention of holding refund erroneous is baseless; and (iv) the Adjudicating Authority did not meet the time line as envisaged in the sub-section 4B of Section 73 of the Finance Act, 1994.

5. During the personal hearing, the learned Advocate of the appellant appeared before me and reiterated the grounds of appeal and also made additional written submission.

6. I have carefully gone through the facts of the case on record, grounds of appeal in the Appeal Memorandum, further submissions and oral



submissions made by the appellant at the time of personal hearing and thereafter.

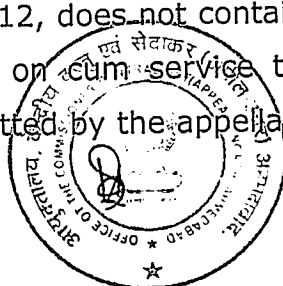
7. The question to be decided is as to whether the refund granted to the appellant vide OIO No. SD-01/Refund/13/AC/Altus/14-15 dt. 01.05.2014, was proper or not and whether the Adjudicating Authority's confirmation of demand vide OIO No. SD-05/19/DKJ/DC/Division-II/2016-17 dt.30.03.2017, is proper or not.

8. On going through the Assistant Commissioner's Order sanctioning refund to the appellant vide OIO No. SD-01/Refund/13/AC/Altus/14-15 dt. 01.05.2014, it is apparent that the aspect of unjust enrichment had not been verified in detail. The Adjudicating Authority took the word of the Chartered Accountant who issued a certificate that the claimant had not passed the service tax liability. The Adjudicating Authority did however, state that the appellant had not factored the service tax component as a cost for charging revenue to M/s.CERF and their schools. The appellant however in their reply dt. 09.09.2015, to the S.C.N. issued for the recovery of the erroneous refund sanctioned, stated that the concept of 'Doctrine of Unjust Enrichment' implies that if the refund is sought after passing on the tax incidence to the Service receiver and if such refund is sanctioned and paid to the service tax payer, it would amount to unintended double benefit. The appellant said that in their case however, the invoices in respect of which refund was claimed and received were issued only for the service portion without adding in to it the service tax element. Hence, the refund received by them was on account of erroneous payment of service tax for the period which recouped their loss. The Adjudicating Authority, while deciding the matter vide OIO No. SD-05/19/DKJ/DC/Division-II/2016-17 dt.30.03.2017, found that in normal business practice, not passing the burden of taxes to the Service Receiver is an exception and therefore Section 11(B)(1) of the Central Excise Act, 1944, requires the appellant, as the person claiming refund, to produce documentary and other evidences to show that the incidence of such duty had not been passed by him to any other person. As the appellant failed to produce documentary evidence to prove that he has not passed on the incidence to tax paid by him to any other person, the Adjudicating Authority ordered the recovery of the erroneously sanctioned refund amount of Rs. 8,52,190/-.

9. The refund had to be sanctioned, if not to the appellant, then it was to be ordered to be credited to the Consumer Welfare Fund, based on the 'Doctrine of Unjust Enrichment' only. For arriving at the conclusion that the



appellant had passed on the incidence of tax to the Service Receiver, the appellant had to submit documentary evidence before the sanctioning authority. The Sanctioning Authority of the refund claim before sanctioning the same, had underwent the process of pre-audit of the refund claim and after due completion of the auditing process, she had sanctioned the refund claim. Thereafter too, the review process of the Order sanctioning the refund claim by the Department, has accepted the Order to be proper. Therefore, the impugned order of the Adjudicating Authority to demand the refund amount as erroneously sanctioned as the appellant had not submitted documents in support, does not appear to proper. The question that arises here is that what documentary evidence was the appellant required to provide to justify that there was not unjust enrichment involved in this matter. The Adjudicating Authority at Para 19 in the impugned order dt.30.03.2017, has stated the appellant's defence that wherever the bills were raised for the exempted service, they were issued only for the value of the service portion and not with the service tax element. The said fact put up by the appellant in his defence has not been denied or found to be incorrect by the Adjudicating Authority. The appellant had provided the Chartered Accountant's certificate to the refund sanctioning authority informing that the appellant had not passed the service tax liability. Besides, the appellant submitted detailed ledgers and corresponding invoices of the relevant period to prove that they had not passed on the burden of payment of Service tax to their subsidiary company i.e. M/s. Calorx Education and Research Foundation. The Subsidiary company i.e. M/s. Calorx Education and Research Foundation also provided a clarification that the bills raised by the appellant to them did not contain the service tax element and were purely value of the services provided. The Balance Sheet of the appellant for the corresponding period did depict ledger entries indicating that the Service tax amount was pending as refund receivable and there was no receipt of any amount towards Service tax pertaining to the disputed amount involved in this matter. The agreements between the appellant and their Subsidiary company i.e. M/s. Calorx Education and Research Foundation also indicated the amount payable and taxes were to be charged extra, if any. The Chartered Accountants of the subsidiary company i.e. M/s. Calorx Education and Research Foundation, also provided a Certificate dt.21.12.2017, that for the services received by M/s. Calorx Education and Research Foundation from the appellant for the period September, 2012, does not contain service tax element and that the bills are not issued on cum service tax basis. Besides, on verification of the ST-3 return submitted by the appellant for the



period July to September, 2012, it is noticed that the appellant has neither availed nor utilized any Cenvat credit during the relevant period and for the service tax payments made by them for the relevant period. To conclude, I find that the appellant was correctly sanctioned the refund claim of Rs.8,52,190/-, vide OIO No. SD-01/Refund/13/AC/Altus/14-15 dt.01.05.2014, and it does not appear to be erroneous for the lack of any justifiable grounds.

10. In view of the above, I set aside the impugned order dt.30.03.2017, and allow the appellant's appeal.

11. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।

11. The appeal filed by the appellant, stands disposed off in above terms.

*उमा शंकर*

(उमा शंकर)

आयुक्त (अपील्स)

ATTESTED

*[Signature]*

(R.R. NATHAN)  
SUPERINTENDENT,  
CENTRAL TAX APPEALS,  
AHMEDABAD.

**By R.P.A.D.:**

**To,**

M/s. Altus Learning Pvt. Ltd.,  
D-1001/1002, Titanium Square,  
Thaltej Cross Road,  
Thaltej  
Ahmedabad.

**Copy to:**

- 1) The Chief Commissioner, Central Tax, GST, Ahmedabad Zone.
- 2) The Commissioner, Central Tax, Ahmedabad-Ncrth.
- 3) The Dy./Asst. Commissioner, Division-VII, Central Tax, GST, Ahmedabad (North), Ahmedabad.
- 4) The Asst. Commissioner(System), Central Tax, Hqrs., Ahmedabad (North).
- 5) Guard File.
- 6) P.A. File.



