

	<b>केंद्रीय कर आयुक्त (अपील)</b>	
सत्यमेव जयते	<b>O/O THE COMMISSIONER (APPEALS), CENTRAL TAX,</b> केंद्रीय उत्पाद शुल्क भवन, सातवीं मंजिल, पोलिटेकनिक के पास, आम्बावाडी, अहमदाबाद-380015	7 <sup>th</sup> Floor, Central Excise Building, Near Polytechnic, Ambavadi, Ahmedabad-380015
☎ : 079-26305065		टैलेफैक्स : 079 - 26305136

रजिस्टर डाक ए.डी.द्वारा

1339+0  
1343

क फाइल संख्या (File No.): V2(STC)5/North/Appeals/ 2017-18  
 ख अपील आदेश संख्या (Order-In-Appeal No.): **AHM-EXCUS-002-APP- 311-17-18**  
 दिनांक (Date): **30/01/2018** जारी करने की तारीख (Date of issue): **5/3/2018**  
 श्री उमा शंकर, आयुक्त (अपील-II) द्वारा पारित  
 Passed by **Shri Uma Shanker**, Commissioner (Appeals)

ग \_\_\_\_\_ आयुक्त, केंद्रीय उत्पाद शुल्क, (मंडल-VI), अहमदाबाद- II, आयुक्तालय द्वारा जारी  
 मूल आदेश सं \_\_\_\_\_ दिनांक \_\_\_\_\_ से सृजित  
 Arising out of Order-In-Original No. **SD-06/03/AC/Unique comm/17-18** Dated:  
**27/04/2017**  
 issued by: Assistant Commissioner Central Excise (Div-VI), Ahmedabad-II

घ अपीलकर्ता/प्रतिवादी का नाम एवम पता (Name & Address of the Appellant/Respondent)

### M/s Unique Communication

कोई व्यक्ति इस अपील आदेश से असंतोष अनुभव करता है तो वह इस आदेश के प्रति यथास्थिति नीचे बताए गए सक्षम अधिकारी को अपील या पुनरीक्षण आवेदन प्रस्तुत कर सकता है।

Any person an 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) (क) (i) केंद्रीय उत्पाद शुल्क अधिनियम 1994 की धरा अतत नीचे बताए गए मामलों के बारे में पूर्वोक्त धारा को उप-धारा के प्रथम परंतुक 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।

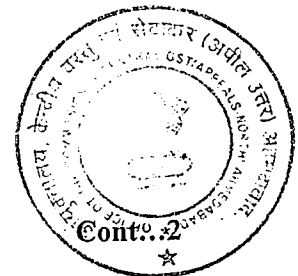
A revision application lies to the Under Secretary, to the Government of India, Revision Application Unit, Ministry of Finance, Department of Revenue, 4th Floor, Jævan Deep Building, Parliament Street, New Delhi-110001, under Section 35EE of the CEA 1944 in respect of the following case, governed by first proviso to sub-section (1) of Section-35 ibid:

(ii) यदि माल की हानि के मामले में जब हानि कारखाने से किसी भंडारगार या अन्य कारखाने में या किसी भंडारगार से दूसरे भंडारगार में माल ले जाते हुए मार्ग में, या किसी भंडारगार या भंडार में चाहे वह किसी कारखाने में या किसी भंडारगार में हो माल की प्रकिया 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 मामले में जो भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित है।

G. P. J. J.



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

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 हो।

- (d) 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.

- (1) केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001 के नियम 9 के अंतर्गत विनिर्दिष्ट प्रपत्र संख्या इए-8 में दो प्रतियों में, प्रेषित आदेश के प्रति आदेश प्रेषित दिनांक से तीन मास के भीतर मूल-आदेश एवं अपील आदेश की दो-दो प्रतियों के साथ उचित आवेदन किया जाना चाहिए। उसके साथ खाता इ. का मुख्यशीर्ष 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.

- (2) रिविजन आवेदन के साथ जहाँ संलग्न रकम एक लाख रुपये या उससे कम हो तो रुपये 200/- फीस भुगतान की जाए और जहाँ संलग्न रकम 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 सेवाकर 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 :-

- (क) वर्गीकरण मूल्यांकन से संबंधित सभी मामले सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण की विशेष पीठिका वेस्ट ब्लॉक नं. 3. आर. के. पुरम, नई दिल्ली को एवं

- (a) the special bench of Custom, Excise & Service Tax Appellate Tribunal of West Block No.2, R.K. Puram, New Delhi-1 in all matters relating to classification valuation and.

- (ख) उक्तलिखित परिच्छेद 2 (1) क 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 ओ-20, न्यू मैन्टल हास्पिटल कम्पाउण्ड, मेघाणी नगर, अहमदाबाद-380016.

- (b) To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at O-20, New Metal Hospital Compound, Meghani Nagar, Ahmedabad : 380 016. in case of appeals other than as mentioned in para-2(i) (a) above.

- (2) केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001 की धारा 6 के अंतर्गत प्रपत्र इए-3 में निर्धारित किए अनुसार अपीलीय न्यायाधिकरणों की गई अपील के विरुद्ध अपील किए गए आदेश की चार प्रतियाँ सहित जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग और लगाया गया जुर्माना रूपए 5 लाख या उससे कम है वहां रूपए 1000/- फीस भेजनी होगी। जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग और लगाया गया जुर्माना रूपए 5 लाख या 50 लाख तक हो-लो रूपए 5000/- फीस भेजनी होगी। जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग और लगाया गया जुर्माना रूपए 50 लाख या उससे ज्यादा है वहां रूपए 10000/- फीस भेजनी होगी। की फीस सहायक रजिस्टार के नाम से



रेखांकित बैंक ड्राफ्ट के रूप में संबंध की जाये। यह ड्राफ्ट उस स्थान के किसी नामित सार्वजनिक क्षेत्र के बैंक की शाखा का हो जहाँ उक्त न्यायाधिकरण की पीठ स्थित है।

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 / refund 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 Appellate 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 मूल आदेश यथास्थिति निर्णयन प्राधिकारी के आदेश में से प्रत्येक की एक प्रति पर 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), के प्रति अपील के मामले में कर्तव्य मांग (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 सेवा कर के अंतर्गत, शामिल होगा "कर्तव्य की मांग" (Duty Demanded) -

- (i) (Section) खंड 11D के तहत निर्धारित राशि;
- (ii) लिया गलत सेनवैट क्रेडिट की राशि;
- (iii) 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. 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.

इस सन्दर्भ 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।

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."

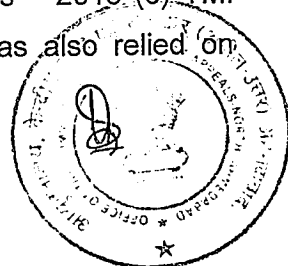


## ORDER-IN-APPEAL

M/s Unique Communication (Proprietor: Shri Brijesh Patel), B-2 Deepika Tower, Near A.M.T.S. Bus Stop, Naroda, Ahmedabad (hereinafter referred to as 'the appellant') was engaged in the promotion of Sales, and Marketing of post paid as well as pre-paid service and other services for M/s Bharti Airtel Limited on the basis of agreement dated 02/09/2014. On the basis of investigation it was observed that during the period 2006-2009, the appellant had received commission amounting to Rs.32,09,487/- from M/s Bharti Airtel Limited on which it appeared that the appellant was liable to pay Service Tax of **Rs.3,95,345/-** towards Business Auxiliary service under Section 65 (19) of the Finance Act, 1994. A Show Cause Notice was issued that was adjudicated *vide* O.I.O. No. STC/12/N-Ram/AC/D-III/12-13 dated 19/06/2012 confirming the demand along with interest and imposing penalties under Sections 76, 77(1)(c), 77(2) and 78 of the Finance Act, 1994. The appellant filed an appeal that was decided by Commissioner (Appeals) upholding the penalties imposed and remanding the case back for re-quantification of demand after considering exemption under Notification No. 06/2005. The original authority again decided the case in remand proceedings *vide* Order-in-original No. SD-06/O&A/05/AC/Unique Comm./14-15 dated 10/07/2015 denying the benefit of exemption under Notification No.06/2005 on the ground that the appellant had provided branded service and again confirming demand of duty amounting to Rs.3,95,345/-.

2. The appellant again preferred an appeal that was decided by Commissioner (Appeals) *vide* Order-in-appeal No. AHM-SVTAX-000-APP-002-16-17 dated 26/04/2016 remanding back the matter to the adjudicating authority with directions to verify whether M/s Bharti Airtel had discharged Service Tax on the entire value of SIM cards and Recharge Coupons as well as discount / commission was given out from the Service Tax value or not. Accordingly, the Assistant Commissioner, Service Tax, Division-VI, Ahmedabad (hereinafter referred to as 'the adjudicating authority') has issued **Order-in-original No. SD-06/03/AC/Unique Comm/17-18** dated **27/04/2017** (hereinafter referred to as 'the impugned order') confirming the entire demand of **Rs.3,95,345/-** on the ground that the appellant had not produced any evidence from the service recipient that their discount / commission component was part of the taxable value of the recipient and hence the appellant's request could not be considered.

3. The appellant has preferred the instant appeal mainly on the grounds that the activity of the appellant is not taxable and to this support, the appellant has relied on CCE, Meerut vs M/s Virendra Electric Works and M/s Bist Engineers – 2013 (6) TMI 317 (Delhi – CESTAT) and catena of case laws. The appellant has also relied on



several decisions to challenge the invoking of extended period as well as on the imposition of penalties.

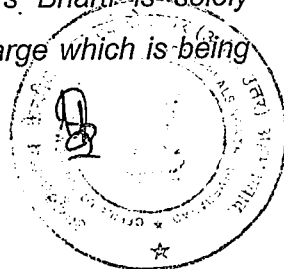
4. Personal hearing in the appeal was held on 24/02/2018. Shri Rohan Thakkar, C.S. appeared and reiterated the grounds of appeal. He also referred to 2017 (9) TMI 502 (All.) – Chotey Lal Radhe Shyam and 2013 (6) TMI 339 (CES) – GR Movers and Martend Foods and Dehydrates Pvt. Ltd.

5. I have carefully gone through the contents of two earlier order of Commissioner (Appeals), the impugned order in the remand proceedings and the grounds of appeal filed by the appellant. It is pertinent to mention at this stage that the impugned order is in accordance with the remand proceedings as per O.I.A. No.AHM-SVTAX-000-APP-002-16-17 dated 26/04/2016 holding that if M/s Bharti Airtel had paid Service Tax on the entire Maximum Service Charge inclusive of the amount of commission paid to the appellant then demanding Service Tax once again from the appellant under the category of Business Auxiliary service would be tantamount to double taxation. According the case was remanded back to the original authority with the following directions:

*"In the event of such material being placed before the Adjudicating Authority, the same shall be considered in accordance with law. The appellants are also directed to put all the evidences before the Adjudicating Authority in support of their contention as well as any other details / documents etc. that may be asked for by the Adjudicating Authority when the matter is heard in remand proceedings before the Adjudicating Authority."*

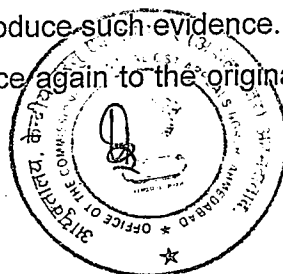
The above directions were preceded by the finding of Commissioner (Appeals) in paragraph 6 of O.I.A. No.AHM-SVTAX-000-APP-002-16-17 dated 26/04/2016 in the following terms:

*I find that though the appellants have not put forth any evidence that M/s Bharti have paid Service Tax on the entire value (Maximum Service Charge) inclusive of the value of commission amount paid to the appellants, it is the current practice in this field that the Telecommunication Companies like M/s Vodafone Essar Gujarat Ltd., or M/s Bharti etc. used to pay the Service Tax on the total MRP of the SIM Cards under the category of Telecommunication Services. And this is what exactly contended by the appellants that M/s Bharti is solely responsible to pay service tax on said Maximum Service Charge which is being recovered from the customers.*



Herein, it is also very relevant to emphasize that it has already been ordered in the first O.I.A. No. AHM-SVTAX-000-APP-277-13-14 dated 18/12/2013, in paragraph 12 thereof, that the services provided by the appellant are of the nature of Business Auxiliary Services, whereas the nature of Services provided by the Service recipient are different. Similarly in paragraph 14, 15, 16, and 17 of the first O.I.A. the penalties and late fees imposed under Section 76, Section 77, Section 78 and Section 70 of the Finance Act, 1994 have all been upheld. There is no mention of any appeal filed by the appellant against both the earlier O.I.As., both of which had ordered the case to be remanded back to the original authority for the limited purpose of re-quantification of demand and quantum of penalties. Therefore, the issues relating to the impugned service being chargeable to Service Tax, the sustainability of demand for Service Tax invoking extended period along with interest and the liability of the appellant to penalties are all settled against the appellant and the only issue that remains before me is whether the appellant has produced the relevant evidence before the adjudicating authority to claim that that Service Tax on the entire value (Maximum Service Charge) was inclusive of the value of commission amount paid to the appellants and if yes then has the adjudicating authority correctly appreciated the evidence for the purpose of re-quantification.

6. In the present round of adjudication, it has clearly been held by the adjudicating authority in paragraph 14 of the impugned order that since the appellant had not submitted any such evidences from the service recipient it cannot be ascertained whether discount / commission component was part of the taxable value of the service recipient or otherwise. The adjudicating authority has highlighted that if the appellant had produced the evidences from the service recipient that its discount / commission component was part of the taxable value of the recipient, then it could have been argued that it would amount to double taxation, if the commission income of the appellant was again subjected to Service Tax and the appellant's plea could have been considered. Further, in the present appeal also, it is not the plea of the appellant that it had produced any evidence before the adjudicating authority that was not appreciated or included in the findings of the impugned order. The appellant has not referred to any data received from the end of M/s Bharti Airtel to evidence that the discount / commission component was part of the taxable value of the service. The litigation in the instant matter has already seen three rounds of adjudication and two rounds of appeals. Thus there was ample opportunity for the appellant to produce the evidence that would reduce the service liability to the extent already suffered at the end of the recipient of service. At no point in time has the appellant pleaded for more time or opportunity to gather the requisite documents / data and produce the same for consideration. Even in the present appeal, there is no plea for more time to produce such evidence. Therefore, no purpose will be served by remanding the matter once again to the original authority



and I find that the appeal does not specify or mention any evidence in support of the appellant's plea that its discount / commission component was part of the taxable value on which the recipient had paid Service Tax. The appeal is rejected.

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

उमा शंकर

(उमा शंकर)

आयुक्त (अपील्स-१)

Date: 30 / 01 / 2018

Attested

(K. P. Jacob)  
Superintendent (Appeals-I)  
Central Excise, Ahmedabad.

By R.P.A.D.

To  
M/s Unique Communication (Prop. Brijesh Patel),  
B-2, Deepika Tower, Near AMTS Bus Stop,  
Naroda, Ahmedabad.

Copy to:

1. The Chief Commissioner of C.G.S.T., Ahmedabad.
2. The Commissioner of C.G.S.T, Ahmedabad North.
3. The Additional Commissioner, C.G.S.T. (System), Ahmedabad North.
4. The Deputy Commissioner, Division-I, Ahmedabad North.
5. Guard File.
6. P.A.

