



आयुक्त का कार्यालय), अपीलस(
Office of the Commissioner,
 केंद्रीय जीएसटी, अहमदाबाद आयुक्तालय
Central GST, Appeal Commissionerate-
Ahmedabad



जीएसटी भवन, राजस्व मार्ग, अम्बावाड़ी अहमदाबाद ३८००१५.
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स्पीड पोस्ट

क फाइल संख्या : File No : GAPPL/COM/STP/312/2020-Appeal-O/o COMMR-CGST-APPL-AHMEDABAD

ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-EXCUS-002-APP-59/2020-21**
 दिनांक Date : **23.03.2021** जारी करने की तारीख Date of Issue : **31.03.2021**

आयुक्त (अपील) द्वारा पारित
 Passed by **Shri Akhilesh Kumar**, Commissioner (Appeals)

ग Arising out of Order-in-Original Nos. **05/ADC/2020-21/MLM** dated **06.07.2020**, passed by
 Additinal Commissioner, Central GST & Central Excise, Ahmedabad-North

ध अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent

Appellant- - M/s Ahmedabad University.

Respondent- Additinal Commissioner, Central GST & Central Excise, Ahmedabad-North

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 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 :

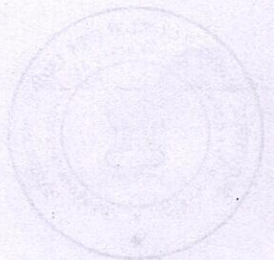
Revision application to Government of India :

(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।

(i) 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 :

(ii) यदि माल की हानि के मामले में जब ऐसी हानि कारखाने 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 प्रकिया के दौरान हुई हो।

(ii) 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.



(क) 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।

(A) 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.

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

(B) 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।

(c) 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.

(i) 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) 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 2nd माला, बहुमाली भवन, असरवा, गिरधरनागर, अहमदाबाद -380004

(a) 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 in para-2(i) (a) above.



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 .

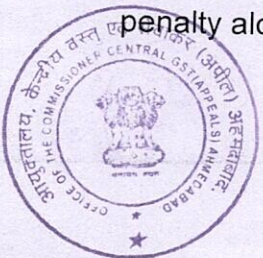
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (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.

इस 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. Ahmedabad University, AES Bunglow-2, Commerce Six Road, Navrangpura, Ahmedabad, Gujarat-380009, for short 'AU', holding Service Tax Registration No.AAAJT2294DSD001 engaged in providing taxable services viz. management or business consult service, advertising agency services, manpower recruitment/supply services, commercial training or coaching, renting of immovable property service (henceforth referred as "appellant") has filed the present appeal against the Order-In-Original No. 05/ADC/2020-21/MLM dated 06.07.2020 (henceforth referred as "impugned order") passed by the Additional Commissioner, Central GST & CX, Ahmedabad-North (henceforth, "adjudicating authority").

2. The fact of the case, in brief, are that during test check audit of the record of the appellant for the period from F.Y. 2013-14 to F.Y. 2015-16 by office of the Principal Director of Audit(Central) Ahmedabad(CERA), it was noticed that M/s. AU and Ahmedabad Education Society, Ahmedabad entered in to Memorandum of Understanding (MOU) with M/s. Unichem Laboratories Limited, Ahmedabad whereby an amount of Rs.7,00,00,000/- was received by the appellant as donation. They also received a donation of Rs.5,62,00,000/- from Mumbai based four entity Viz M/s JM Financial Group, ENAM group, Asit Koticha Foundation and Damani Estate & Finance Pvt Ltd during the period from F.Y. 2013-14 to F.Y. 2015-16. From the transactions and clauses of the MOU, it was observed by CERA audit that said donation were against the consideration and hence falls under the ambit of declared service chargeable to service tax. Therefore, a show cause notice dated 25.04.2018 was issued to the appellant which was decided under impugned order confirming total service tax demand of Rs.1,63,83,700/- under proviso to Section 73(1) of the Finance Act,1994 along with interest and also imposed penalty under Section 77(2) and 78 of the Finance Act,1994.

3. Being aggrieved, the appellant preferred this appeal, contesting *inter-alia*, that OIO is issued without concentrate proof and it is based on



presumptions; that amount received from M/s. Unichem Laboratories Limited will not be considered as "declared Service" and will not attract service tax; that demand of service tax is not supported with any evidence where it is proved that desired benefit flows to the donors from the donation; that name displayed is "Amrut Mody" but it does not constitute as an advertisement of such name in term of definition of advertisement mentioned under Section 65B(2); that it cannot be said that the intention of M/s. Unichem Laboratories Limited was to advertise a person named "Amrut Mody"; that the requirement as per education guide is that name of doner must be displayed, however in the instant case donor is M/s. Unichem Laboratories Limited and name displayed is of "Amrut Mody" and hence the condition is not fulfilled; that in term of para 2.2.2 of Education Guide "or such that it gives a desired advantage to the donor" is totally ignored by the adjudicating authority; that any entity can get the benefit of advertisement only when the actual name of the donor is emphasized and not the name suggested by donor which is nowhere connected to the actual name of the donor; that M/s. Unichem Laboratories Limited does not receive any publicity of "Amrut Mody School of Management" ; that nominating a person in advisory committee of school of management does not confer any advantage o the donor; that the intention to appoint a person in the committee is not to get desired advantage but just to ensure proper utilization of funds for what it was intended and hence there was no *quid pro quo* to the donor.

3.1 With reference to amount received in respect of 'Venture Studio' from other donor viz. M/s JM Financial Group, ENAM Group, Asit Koticha Foundation and Damani Estate & Finance Pvt Ltd, it was contested that by the appellant that to mention name of the donor in annual reports and publication is a statutory compliance in term of accounting standards etc and not to confer any advantage to the donors, that the main motive behind publishing the name of the donor in the annual accounts and publication is that the readers can have the idea about the structure of the funding made to the institution; that on the issue of 33.33% share of the donor in capital structure, they argued that said transaction is in the nature of "security" included in "Negative list" under

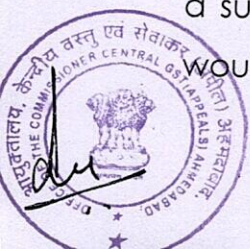


section 66D and excluded from charging section 66B of the Finance Act,1994; that in absence of any evidence to prove that desired benefit flows to donors from the donation given to the appellant, demand confirmed is not sustainable; that donor doesn't receive any reciprocal benefit from the amount funded from social activities that cannot be fall under definition of 'service'; that no duty can be demanded on presumptions and assumptions basis; that no sound reason and ground have been mentioned in various stage of assessment as to how amount received will fall under the definition of 'declare service', they relied and case laws in support of their claim. It is further contested by the appellant that the allegations of suppression of fact is unfounded and demand is liable to be set aside for the reasons that the appellant has shown the income in ST-3 returns which is taxable under service tax law and not shown payments received towards donations as it can't be treated as 'service'. They cited various case laws in this regard.

4. Personal hearing in the case was held on 19.02.2021 through virtual mode. Shri Amish Khandhar, CA, and Shri Rasmin Vaja, CA, appeared for hearing on behalf of the appellant. They reiterated the submissions made in appeal memorandum and further stated that CBIC has clarified similar issue by way of circular in the matters related to GST and the ratio of the same may be applied in this case also.

5. I have carefully gone through the facts of the case on records, grounds of appeal in the Appeal Memorandum as well as oral and written submissions made at the time of personal hearing. The issue requiring determination in this case is whether the amount of donations received by the appellant can be treated as consideration chargeable to service tax as declared service in terms of the provisions of Section 66E(e) of the Finance Act, 1994 or otherwise and if so whether demand of service tax confirmed invoking extended period is sustainable or not.

6. It is observed from the case records that the appellant had entered in to a Memorandum of Understanding (MOU) with M/s. Unichem Laboratories Limited as per which the appellant would receive a sum of Rs. 15 Crores from M/s Unichem in phases and the appellant would confer rights to them as per MOU. The agreement also placed an



obligation on AU to name the School of Management as suggested by M/s Unichem and also publish his name in all programs and publicity materials. During the F.Y. 2013-14 to F.Y. 2015-16, the appellant received a sum of Rs. 7 Crores viz., RS. 3,00,00,000/- in F.Y. 2013-14, Rs. 2,00,00,000/- in F.Y. 2014-15 and Rs. 2,00,00,000/- in F.Y. 2015-16. Further, the appellant also received Rs.2,20,50,000/- in F.Y. 2013-14, Rs. 1,74,50,000/- in F.Y. 2014-15 and Rs. 1,67,00,000/- in F.Y. 2015-16 total amounting to Rs.5,62,00,000/- from Mumbai based four donors viz. M/s. JM Financial Group, ENAM Group, Asit Koticha Foundation and Damani Estate & Finance Pvt Ltd. The said amount was received as a part of new initiative, AU and Centre for Design Research at Stanford University, (CDR), USA seeking to engage in collaboration towards creating and studying the development of an innovation eco-system in Ahmedabad region by setting up a centre called Venture Studio, Centre for Innovative Business Design for the methodology to nature and catalyze the formation of design-oriented entrepreneurial ventures. In consideration to above donation, the MOU obligates AU/Venture Studio to recognize the names of donors in annual reports and publication of the Venture Studio, provides 33 percent capital share of Equity capital of the Venture on commercial launch of products or services to the donors in equal proportion as sweet equity and give the donors the right to nominate two members in the Advisory Board and Management Committee. The SCN as well as the impugned order has proposed to include the aforementioned amount as consideration for providing declared service under Section 66E of the Finance Act, 1994.

6.1. It would be appropriate to go through the provisions related to Declared Service contained in Section 66E of the Finance Act, 1994, which is reproduced below:

SECTION [66E. Declared services. —

The following shall constitute declared services, namely :—

- (a) *renting of immovable property*
- (b) *construction of a complex, building, civil structure or a part thereof, including a complex or building intended for sale to a buyer, wholly or partly, except where the entire consideration is received after issuance of completion-certificate by the competent authority.*

Explanation. — *For the purposes of this clause,—*



- (I) the expression "competent authority" means the Government or any authority authorised to issue completion certificate under any law for the time being in force and in case of non-requirement of such certificate from such authority, from any of the following, namely :—
- (A) architect registered with the Council of Architecture constituted under the Architects Act, 1972 (20 of 1972); or
 - (B) chartered engineer registered with the Institution of Engineers (India); or
 - (C) licensed surveyor of the respective local body of the city or town or village or development or planning authority;
- (II) the expression "construction" includes additions, alterations, replacements or remodelling of any existing civil structure;
- (c) temporary transfer or permitting the use or enjoyment of any intellectual property right;
- (d) development, design, programming, customisation, adaptation, upgradation, enhancement, implementation of information technology software;
- (e) agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act;**
- (f) transfer of goods by way of hiring, leasing, licensing or in any such manner without transfer of right to use such goods;
- (g) activities in relation to delivery of goods on hire purchase or any system of payment by instalments;
- (h) service portion in the execution of a works contract;
- (i) service portion in an activity wherein goods, being food or any other article of human consumption or any drink (whether or not intoxicating) is supplied in any manner as a part of the activity.]
- [(j) assignment by the Government of the right to use the radio-frequency spectrum and subsequent transfers thereof.]

7. It is observed from the legal provision at clause (e) above that the - agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act- shall constitute 'declared service'

7.1. Further, as per para 2.2.1 of the Education Guide published by CBIC and as per explanation (a) to Section 67 of the Finance Act, 1994.

"consideration" includes any amount that is payable for the taxable services provided or to be provided. Since this definition is inclusive it will not be out of place to refer to the definition of 'consideration' as given in section 2(d) of the Indian Contract Act, 1872 as follows -

"When, at the desire of the promisor, the promisee or any other person has done or abstained from doing, or does or abstains from doing, or promises to do or to abstain from doing, something, such act or abstinence or promise is called a consideration for the promise"

In simple terms, 'consideration' means everything received or recoverable in return for a provision of service which includes monetary payment and any consideration of non- monetary nature or deferred consideration.



7.2. Further para 2.2.2 of the guide states that:

to be taxable an activity should be carried out by a person for a 'consideration'. Also Para 2.2.4 of the guide states that compensation in kind such as (iii) doing or agreeing to do an act in return for provision of service are considered as non-monitory consideration and the value of monitory and non-monitory consideration needs to be valued for determining tax payable on taxable service.

7.3. Further, regarding consideration, para 2.2.2 of the guide states that:

2.2.2 What are the implications of the condition that activity should be carried out for a 'consideration'?

- To be taxable an activity should be carried out by a person for a 'consideration'
- Activity carried out without any consideration like donations, gifts or free charities are therefore outside the ambit of service. For example grants given for a research where the researcher is under no obligation to carry out a particular research would not be a consideration for such research.
- An act by a charity for consideration would be a service and taxable unless otherwise exempted. (for exemptions to charities please see Guidance Note 7)
- Conditions in a grant stipulating merely proper usage of funds and furnishing of account also will not result in making it a provision of service
- **Donations to a charitable organization are not consideration unless charity is obligated to provide something in return e.g. display or advertise the name of the donor in a specified manner or such that it gives a desired advantage to the donor.**

8. In context of the above legal provisions and explanations given in the Education Guide, it would be appropriate to examine relevant clauses of the MOU with M/s. Unichem Laboratories Limited.

8.1. As per clause (2) of the MOU, upon receipt of Rs.3 crore, AES and AU will confer all rights and fulfill all the obligations as stipulated hereunder except the right to appoint additional member as provided under clause (9) which will be applicable on receipt of Rs.7.50 crores by AU.,

8.2. As per clause (5) and (6) of the MOU, in consideration of Unichem paying Rs.15 crore under this agreement, the school of management will



be known as "Amrut Mody School of Management". This name will remain in perpetuity and will not be changed, altered and modified and will remain as a part of the school and in all its program and activities. If any program is organized with other faculty, school or institution the name of the school management will be properly displayed jointly with other names. This name of the school of management will appear on all its stationary, publicity material signage systems etc.

8.3. As per Clause (7) of the MOU, the present building of the MBA Campus running the AES PG Diploma in Business will bear the name as suggested by Unichem and that name will remain as long as the present campus continues to be attached to the School of Management. In case of change in the main administrative building of the school of Management either on this campus or at any other place, whether owned by AES or AU, the new building will bear the same name as suggested by Unichem in placement of the name of the present campus.

8.4. As per Clause (8) of the MOU, Unichem will have a permanent representative on the Advisory Committee for the School of Management.

8.5. Further, as per Clause (9) of the MOU, Unichem will also have one more seat on Advisory Committee making a maximum 9 members in the Committee. The Advisory Committee will play a role of planning and monitoring of implementation of programs and other activities.

8.6. As per Clause (11) of the MOU, one of the Unichem representatives will always be associated with the Search Committee for the selection of the Dean for the School of Management now onwards.

9. From the above, it is apparent that certain conditions and obligation has been imposed by M/s. Unichem Laboratories Limited which is binding on the recipient of such amount i.e appellatant. Therefore, in term of para 2.2.2 of the Education Guide, such amount of donation is nothing but consideration wherein donor is obliged to provide something in return e.g. display or advertise the name of the



donor in a specified manner or such that it gives a desired advantage to the donor. In the instant case, alongwith advertising the name of the donor in a specified manner by which it gives a desired advantage to the donor, the following other conditions and obligations appear in the MOU:

- AES and AU will confer all rights and fulfill all the obligations as stipulated
- Appoint additional member on receipt of Rs.7.50 crores by AU.
- the school of management will be known as "Amrut Mody School of Management".
- This name will remain in perpetuity and will not be changed, altered and modified and will remain as a part of the school and in all its program and activities.
- If any program is organized with other faculty, school or institution the name of the school management will be properly displayed jointly with other names.
- This name of the school of management will appear on all its stationary, publicity material signage systems etc.
- The present building of the MBA Campus running the AES PG Diploma in Business will bear the name as suggested by Unichem and that name will remain as long as the present campus continues to be attached to the School of Management.
- In case of change in the main administrative building of the school of Management either on this campus or at any other place, whether owned by AES or AU, the new building will bear the same name as suggested by Unichem in placement of the name of the present campus.
- Unichem will have a permanent representative on the Advisory Committee for the School of Management.
- Unichem will also have one more seat on Advisory Committee which will play a role of planning and monitoring of implementation of programs and other activities.
- One of the Unichem representatives will always be associated with the Search Committee for the selection of the Dean for the School of Management now onwards.



10. In view of the above conditions and obligations agreed upon in the MOU, the contention of the appellant that the transaction is purely a case of donation is not tenable and is not acceptable. I find that the MOU signed by the appellant and M/s Unichem casts specific obligations on the part of appellant as discussed above. Such obligations are agreed to give desired advantage to the donors as quid pro quo. Hence, the considerations received by the appellant has been rightly considered as consideration towards the provision of declared service under Section 66E(e) of the Finance Act, 1994.

11. Further, in case of donation amount of Rs.10.60 crore by Mumbai based four donors viz. M/s JM Financial Group, ENAM Group, Asit Koticha Foundation and Damani Estate & Finance Pvt Ltd, an MOU was signed between AU and said four entities in respect of project by which AU and Centre for Design Research at Stanford University(CDR) USA agreed to enter in collaboration towards creating and studying the development of an innovation eco-system in Ahmedabad region by setting up a centre called Venture Studio, Centre for Innovative Business Design for the methodology to nature and catalyze the formation of design-oriented entrepreneurial ventures. Some clauses of the said MOU are discussed as under;

- In consideration of the donor's contribution, the Venture Studio will appropriately recognize the name of the donors in their annual reports and publications.
- Equity capital of the Venture for the commercial launch of products, service and all results, by whatever name called whenever such commercial launch material will be subscribe to a sweet equity, i.e. in consideration of their respective seeding efforts to the Venture and with making any fresh monetary payment for the same, in the ratio of 33.33% each by the students/promoter, AU and donors or their nominee. The 33.33%capital share of the donors will be available to the donors in equity proportion and each donor may distribute his share among his own group entities in any proportion he deem appropriate.
- Donors will have right to nominate two members in Advisory Board and Management Committee who shall play the role of planning



and monitoring the implementation of programs and other activities.

12. Above mentioned terms reveal that certain obligations are to be complied by the recipient of the amount of donation. It is, therefore, observed that in term of para 2.2.2 of the Education Guide, such amount of donation forms part of consideration wherein donor is obliged to provide something in return e.g. display or advertise the name of the donor in a specified manner or such that it gives a desired advantage to the donor. Therefore, the argument of the appellant that the donor doesn't receive any reciprocal benefit from the amount funded for social activities and that that no sound reason and ground have been mentioned in various stage of assessment as to how amount received will fall under the definition of 'declare service' etc are not acceptable. It is apparent that the donors are receiving desired advantages from the MOU and hence the amount in question has been rightly held as considerations for providing declared service under Section 66E(e) of the Finance Act, 1994.

13. The appellant contested during personal hearing that CBIC has clarified similar issue by way of circular in the matter related to GST and ratio of the same may be applied in their case also and submitted copy of Circular No. 116/35/2019-GST, dated 11-10-2019. Relevant para of the circular is reproduced hereinbelow:

Subject :Levy of GST on the service of display of name or placing of name plates of the donor in the premises of charitable organisations receiving donation or gifts from individual donors - Regarding.

*Representations have been **received seeking clarification whether GST is applicable on donations or gifts received from individual donors by charitable organisations involved in advancement of religion, spirituality or yoga** which is acknowledged by them by placing name plates in the name of the individual donor.*

2. *The issue has been examined. **Individual donors** provide financial help or any other support in the form of donation or gift to institutions such as religious institutions, charitable organisations, schools, hospitals, orphanages, old age homes etc. The recipient institutions place a name plate or similar such acknowledgement in their premises to express the gratitude. When the name of the donor is displayed in recipient institution premises, in such a manner, which can be said to be an expression of gratitude and public recognition of donor's act of philanthropy and is not aimed at giving publicity to the donor in such*



manner that it would be an advertising or promotion of his business, then it can be said that there is no supply of service for a consideration (in the form of donation). There is no obligation (quid pro quo) on part of recipient of the donation or gift to do anything (supply a service). Therefore, there is no GST liability on such consideration.

2.1 Some examples of cases where there would be no taxable supply are as follows :-

(a) "Good wishes from Mr. Rajesh" printed underneath a digital blackboard donated by **Mr. Rajesh to a charitable Yoga institution.**

(b) "**Donated by Smt. Malati Devi** in the memory of her father" written on the door or floor of a room or any part of a temple complex which was constructed from such donation.

2.2 **In each of these examples, it may be noticed that there is no reference or mention of any business activity of the donor** which otherwise would have got advertised. Thus where all the three conditions are satisfied namely the gift or donation is made to a charitable organization, the payment has the character of gift or donation and the purpose is philanthropic (i.e. it leads to no commercial gain) and not advertisement, GST is not leviable.

3. Difficulty if any, in the implementation of this circular may be brought to the notice of the Board.

13.1 From the above, it is observed that the said circular is applicable in the cases wherein the donation has been given by the individual donor to charitable organizations. The donation in the instant case is given by the business entity and not individuals and the aspect of quid pro quo is quite apparent from the MOU signed by the appellant. Hence, the said circular is not applicable in the case and it does not help the appellant.

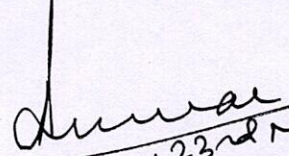
14. It is further contested by the appellant that the allegations of suppression of fact is unfounded and demand is liable to be set aside for the reasons that the appellant has shown in ST-3 returns only that income which is taxable under service tax law and not shown payments received towards donations as it can't be treated as 'service'. They further contended that to avoid any mixing of different types of income and for easily reconciling financial records with service tax returns, they maintained separate records for taxable and non taxable income in books of accounts maintained by them and that said taxable income matches with service tax returns filed by them. In this context, it is observed from above submission of the appellant that they admit the fact that the amounts of donation received by them were not recorded



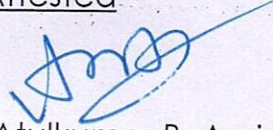
in the ST-3 returns filed by them. Further, it is also observed that if the audit of the record of the appellant was not conducted, the issue of non-payment of tax on the such income would have remained undetected. Therefore, the ground raised by the appellant that suppression of fact is unfounded, is not acceptable.

15. In view of the discussions above, I reject the appeal filed by the appellant and uphold the impugned order.

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


23rd March, 2021.
(Akhilesh Kumar)
Commissioner, CGST (Appeals)
Date: .03.2021

Attested


(Atulkumar B. Amin)
Superintendent
Central Tax (Appeals)
Ahmedabad



By R.P.A.D.

To,
M/s. Ahmedabad University,
AES Bungalow-2, Commerce Six Road,
Navrangpura, Ahmedabad-380009.

Copy to:

- 1) The Chief Commissioner of Central Tax, Ahmedabad Zone.
- 2) The Commissioner of Central Tax, Ahmedabad-North.
- 3) The Additional Commissioner, Central Tax (System), Ahmedabad-North.
- 4) The Additional Commissioner, Central Tax, Ahmedabad-North.
- 5) The Asstt./Deputy Commissioner, CGST Division-VII, Ahmedabad-North.
- 6) Guard File.
- 7) P.A. File

