



सत्यमेव जयते

## केंद्रीय कर आयुक्त (अपील)



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

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क फाइल संख्या : File No : V2(ST)0230/A-II/2016-17

ख अपील आदेश संख्या : Order-In-Appeal No. **AHM-EXCUS-001-APP-228-17-18**

दिनांक Date : 29-12-2017 जारी करने की तारीख Date of Issue 16-1-2018

श्री उमा शंकर, आयुक्त (अपील) द्वारा पारित

Passed by Shri Uma Shanker Commissioner (Appeals)

ग Arising out of Order-in-Original No **SD-02/29/AC/2016-17** Dated **20.12.2016**

Issued by Assistant Commr **STC**, Service Tax, Ahmedabad

घ अपीलकर्ता का नाम एवं पता

Name & Address of The Appellants

**M/s. Indian Institute of Management**

**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, मेघाणी 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 जिस स्थान में न्यायाधिकरण का न्यायपीठ स्थित है, वहाँ के नामित सार्वजनिक क्षेत्र बैंक के न्यायपीठ के सहायक रजिस्ट्रार के नाम से रेखांकित बैंक ड्राफ्ट के रूप में जहाँ सेवाकर की मांग, ब्याज की मांग और लगाया गया जुर्माना रूपए 5 लाख या उससे कम है वहाँ रूपए 1000/- फीस भेजनी होगी। जहाँ सेवाकर की मांग, ब्याज की मांग और लगाया गया जुर्माना रूपए 5 लाख या 50 लाख तक हो तो रूपए 5000/- फीस भेजनी होगी। जहाँ सेवाकर की मांग, ब्याज की मांग और लगाया गया जुर्माना रूपए 50 लाख या उससे ज्यादा है वहाँ रूपए 10000/- फीस भेजनी होगी।

(ii) The appeal under sub section (1) of Section 86 of the Finance Act 1994 to the Appellate Tribunal Shall be filed in quadruplicate in Form S.T 5 as prescribed under Rule 9(1) of the Service Tax Rules 1994 and Shall be 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 is more than five lakhs but not exceeding Rs. Fifty Lakhs, Rs.10,000/- where the amount of service tax & interest demanded & penalty levied is more than fifty Lakhs rupees, in the form of



crossed bank draft in favour of the Assistant Registrar of the bench of nominated Public Sector Bank of the place where the bench of Tribunal is situated.

(iii) वित्तीय अधिनियम, 1994 की धारा 86 की उप-धाराओं एवं (2ए) के अंतर्गत अपील सेवाकर नियमावली, 1994 के नियम 9 (2ए) के अंतर्गत निर्धारित फार्म एस.टी.-7 में की जा सकेगी एवं उसके साथ आयुक्त, केन्द्रीय उत्पाद शुल्क (अपील) के आदेश की प्रतियाँ (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 भेजनी 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 लगाना 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 प्राधिकरण (सीस्तेत) के प्रति अपीलों के मामलों में केन्द्रीय उत्पाद शुल्क अधिनियम, 1984 की धारा 34फ के अंतर्गत वित्तीय(संख्या-2) अधिनियम 2014(2014 की संख्या 24) दिनांक: 06.08.2014 जो की वित्तीय अधिनियम, 1984 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 अर्ज़ी 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-

This order arises on account of an appeal filed by M/s Indian Institute of Management, IIM Road, Vastrapur, Polytechnic, Ahmedabad-380 015 (hereinafter referred to as 'the Appellant') against Order-in-Original NO.SD-02/29/AC/2016-17 Dated 20.12.2016 (hereinafter referred to as the 'impugned order' for the sake of brevity) passed by the Asst. Commissioner, Service Tax, Division-II, APM Building, Satellite Ahmedabad (hereinafter referred to as the "Adjudicating Authority" for the sake of brevity).

2.1 Briefly stated the facts of the case are that appellant is engaged in providing the services under the category of Management or Business Consultancy Services, Manpower recruitment service, Health Club, Education, consultancy and research project and holding Service Tax Registration No. AAATI1247FST001. It was noticed that the appellant has availed credit of Rs. 1,59,778/- for period April, 2014 to March, 2015 on Event management service (Rs. 58,269/-), and Mandap keepar services (Rs. 1,01,509/-) utilized in arranging Cultural and Social functions like Janmastmi, CHAOS, Confluence, staff Gathering, Student Meets, sports and quiz contest for students etc.

2.2 Appellant during course of hearing of SCN dated 08.04.2016 had contended before adjudicating authority that that said inputs are used for providing output services i.e. Education, consultancy and research project and inputs are covered in definition under rule 2(l) of CCR, 2004. Services are used for providing taxable and exempted service and they have opted for rule 6(3) of CCR, 2004 and have reversed proportional credit. Moreover since appellant is regularly and periodically audited no extended period can be invoked.

2.3 Adjudicating authority concluded that said input services are used for holding social and cultural activities and not utilized for said out put service. The Adjudicating Authority had confirmed demand under section 73(1) Finance Act, 1994 read with rule 14 of CCR, 2004 the demand of Rs. 1,59,778/- wrongly availed credit also ordered to pay interest at the appropriate rate under Section 75 Finance Act, 1994 and rule 14 of CCR,2004. Also imposed penalties of Rs. 1,59,778/- under Section 78 of the Finance Act, 1994 and Penalty of Rs. 15,978/- u/r 15(1) of CCR, 2004 r/w section 76 of FA, 1994.

2.4 It is to mention that earlier SCN dated 07.10.2014 for same issue for recovery of Rs. 10,42,436/- for period 2009-10 to 2013-14 was issued on the basis of audit and in that case extended period was invoked.



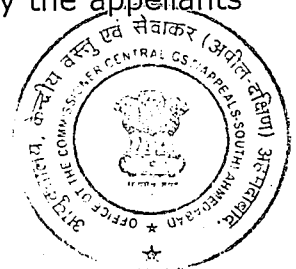
3. Being aggrieved with the impugned order, the appellant has filed the present appeal on 27.01.2017 followed with written submission on the grounds which are interalia mentioned as under:-

- (i) Event management service and Mandap keepar services are utilized used for holding various festival programmes and holding such programme is part of education and research programme.
- (ii) Event management service and Mandap keepar services has direct nexus with the out put services viz. Education, Consultancy and Research programmes.
- (iii) Appellant had availed said services for their clients/customers (students/participants).
- (iv) Event management service and Mandap keepar services are eligible for input services in terms of definition under rule 2(I) of CCR, 2004.
- (v) Holding such programmes like Janmashmi celebration, staff gatherings, students meet, sport and quiz contest builds brand image of appellant.
- (vi) Such programmes are part of marketing and promotional activities for various services provided by appellant.
- (vii) Said input services are utilized for providing exempted as well as taxable service. Hence appellant had opted for rule 6(3A) of CCR-2004 and has reversed credit proportionally from time to time.
- (viii) Entire demand is time barred.
- (ix) Extended period of limitation can not be invoked as there is no suppression of facts.
- (x) Penalty u/s 76 can not be imposed.
- (xi) Penalty u/s 76 and 78 simultaneously can not be imposed.

4. Personal hearing was granted on 07.09.2017 wherein Shri Vipul Khandhar, Chartered Accountant reiterated the contents of the appeal memorandum and submitted copy of OIA AHM-SVTAX-000-APP-29-16 dated 27.06.2017 [ F. No. V2(ST) 138/A-II/2016-17]. They stated that said OIA issued for just previous period for the same issue.

#### **DISCUSSION AND FINDING**

5. I have carefully gone through the facts of the case on records, grounds of the Appeal Memorandum, and written/oral submissions made by the appellants at the time of personal hearing.



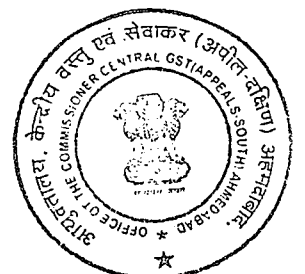
6. I find that impugned OIO is issued in respect of periodical SCN. Appellant during course of hearing submitted copy of OIA AHM-SVTAX-000-APP-29-16 dated 27.06.2017 [ F. No. V2(ST) 138/A-II/2016-17] and stated that said OIA is issued for just previous period and for the same issue. I find that said OIA is for availment of input service credit of Photography Service, Videographer Service and Webcasting Service for period 2014-15. Therefore I find that said OIA submitted is not relevant in present case in hand.

7. I find that contention of revenue is that said input services i.e Event management service and Mandap keepar services, are not utilized in taxable services where as appellant is contending that said services are (a) utilized in marketing and sales promotion of their out put taxable services and exempted service and (b)utilised in building brand image (c) part of educational programme (d) utilized in providing taxable out put services viz i.e. Education, consultancy and research project (e) utilized in taxable and exempted services and are reversing credit as per the procedure as prescribed under Rule-6(3A) of Cenvat Credit Rules, 2004.

8. I am <sup>of</sup> considered view that input services, i.e Event management service and Mandap keepar services, are used directly in providing taxable services viz. Education, consultancy and research project and some times it is used in holding various festival celebration and quiz/sports festivals for students. I am view that such cultural and social programmes arranged for their students campus during festivals are-

- a. Are arranged for participants, which involves theme of management are also a part of education and consultancy research project. Such programmes has nexus with the output service i.e. education, consultancy and research projects.
- b. utilized in marketing and sales promotion of their out put taxable services.
- c. Utilised in building branch image of appellant.
- d. Part of educational programme.
- e. utilized in providing taxable out put services viz i.e. Education, consultancy and research project.
- f. utilized in taxable and exempted services and appellant are reversing credit as per the procedure as prescribed under Rule-6(3A) of Cenvat Credit Rules, 2004.





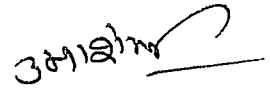
9. I find that said input services are eligible for taking credit as per definition given in under rule 2(I) of CCR, 2004. I find that said two service received by appellant has nexus with the out-put service therefore credit is admissible. They are covered in inclusive clause definition under rule 2(I). therefore said services are eligible for CENVAT credit. Further, I find that said services are utilized in both out put non-taxable/exempted services; therefore benefits of Rule-6(3A) of Cenvat Credit Rules, 2004 can be extended.

10. Now come to argument regarding limitation period for issue of SCN. Time limit prescribed under Section 73(1) of the Finance Act, 1994 for issue of SCN is 18 months (w.e.f May 28, 2012, ) from date of receipt of ST-3 for non-fraud case. Extended period of 5 years can be invoked under Section 73(2) in cases of fraud/suppression. In present case recovery is proposed to be effected u/s 73(1) in SCN for which 18 months time period is available and notice is required to be issued within 18 months. I find that SCN is issued well within 18 months of due date. In SCN extended period is not invoked.

11. When credit has been allowed, imposition of penalty under section 76 and 78 is unjustified. I set aside all penalty imposed and interest demanded. I view of above I set aside the impugned OIO. The appeal filed by the appellant is hereby allowed.

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

12. The appeals filed by the appellant stand disposed off in above terms.



(उमा शंकर)

आयुक्त (अपील्स - II)

ATTESTED



(R.R. Patel)

SUPERINTENDENT (APPEAL-II),  
CENTRAL EXCISE, AHMEDABAD.



BY R.P.A.D.

M/s Indian Institute of Management,  
IIM Road, Vastrapur, Polytechnic,  
Ahmedabad-380 015

**Copy to:**

- 1) The Chief Commissioner, Central Tax, Ahmedabad.
- 2) The Commissioner, Central Tax ,Ahmedabad- SOUTH.
- 3) The Additional Commissioner, Central Tax ,Ahmedabad- SOUTH
- 4) The Asst. Commissioner, Service Tax Div-II, APM building, Anandnagar Road, Satellite, Ahmedabad- 15.
- 5) The Asst. Commissioner(System), Central Tax ,Ahmedabad- SOUTH
- 6) Guard File.
- 7) P.A. File.

