
 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	7 th Floor, Central Excise Building, Near Polytechnic, Ambavadi, Ahmedabad-380015	
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क फाइल संख्या : File No : V2(ST)027/A-II/2017-18

ख अपील आदेश संख्या : Order-In-Appeal No. AHM-EXCUS-001-APP-257-17-18

दिनांक Date : 19-1-2018 जारी करने की तारीख Date of Issue

24/1/2018

श्री उमा शंकर, आयुक्त (अपील) द्वारा पारित

Passed by Shri Uma Shanker Commissioner (Appeals)

ग Arising out of Order-in-Original No SD-01/24/AC/AMA/16-17 Dated 28.02.2017

Issued by Assistant Commr STC, Service Tax, Ahmedabad

ध अपीलकर्ता का नाम एवं पता

Name & Address of The Appellants

M/s. Ahmedabad Management Association

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:-

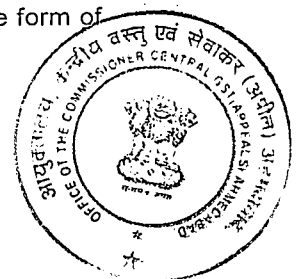
Under Section 86 of the Finance Act 1994 an appeal lies to :-

पश्चिम क्षेत्रीय पीठ सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण ओ. 20, न्यू मेंटल हॉस्पिटल कम्पाउण्ड, मेघानी 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 लगना 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 (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 29) दिनांक: 06.08.2014 जो की वित्तीय अधिनियम, 1984 की धारा 43 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 हैं -

- (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,

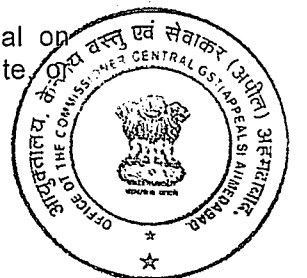
Under Central Excise and Service Tax, "Duty demanded" shall include:

- (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. penalty, where penalty alone is in dispute.



ORDER-IN-APPEAL

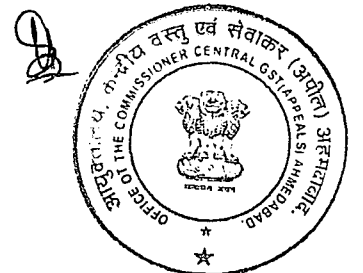
This appeal has been filed by M/s. Ahmedabad Management Association, Torrent AMA Centre, Core Management House, ATIRA Complex, Dr. Vikram Sarabhai Marg, Ahmedabad- 380015 [for short – ‘appellant’] against OIO No. SD-01/24/AC/AMA/2016-17 dated 28.2.2017 passed by the Assistant Commissioner, Division I, Service Tax Commissionerate, Ahmedabad [for short- ‘adjudicating authority’].

2. Briefly, the facts are that a show cause notice dated 17.3.2016, was issued to the appellant in terms of Section 73(1A) of the Finance Act, 1994, *inter alia* alleging that the appellant had received Rs. 75,94,465/- towards reimbursement of expenses for the period from April 2014 to March 2015, but had not paid service tax of Rs. 9,38,552/- on the said amount. The notice therefore, demanded service tax along with interest and further proposed penalty under sections 76 and 77 of the Finance Act, 1994. This notice was adjudicated vide the aforementioned OIO wherein the adjudicating authority confirmed the demand along with interest and further proposed penalty on the appellant under sections 76 & 77 of the Finance Act, 1994.

3. Feeling aggrieved the appellant has filed this appeal on the grounds that:

- (i) AMA is a registered society & a charitable trust, covered under ‘society’s registration Act and Bombay Charitable Trust Act; that it is a non profit organisation and an association of professional members and organizers, including trade and industries; that it is not a commercial concern; that its training is not commercial; that the programme conducted can be considered as continuing education programmes and not a commercial training or coaching;
- (ii) that the Government of Gujarat and AMA had entered into MoU on 24.2.2004 through its Trade and Commerce Commissionerate;
- (iii) that on going through the MoU, it is evident that AMA is an implementing agency of welfare schemes of the Government of Gujarat by making use of grants in aid given by it; that there is no service providers and service recipient relationship between AMA and GoG
- (iv) that the Hon’ble Tribunal in its own case reported at [2009(14) STR 171] had held that the appellant is not a commercial concern; that the programmes conducted by them are in the nature of continuing education;
- (v) that the explanation inserted by Finance Act, 2010 with retrospective effect includes Trust or Society or similar other organization carrying on its activities with or without profit motive;
- (vi) the thread which runs through sections 66, 66B and 94 empowers the Central Government to makes rules for carrying out the provisions of Chapter V of the Act, is manifest in the sense that only the service actually provided by the service provider can be valued and assessed to service tax;
- (vii) expenditure/costs such as travel, hotel, stay etc. cannot be considered as amount charged by service provider for such service provided by him; power to makes rules could not exceed or go beyond section, which provides for charge or collection of service tax;
- (viii) that the amended provisions of section 67 was only w.e.f. 14.5.2015 & is not applicable to the present dispute as it pertains to the period upto March 2015;
- (ix) that the Hon’ble Tribunal in the case of M/s. APITCO [2010(20) STR 475(Tri-Bang)] has held that service tax is not leviable on the grants in aid, received by APITCO;
- (x) that they also wish to rely on the case of Intercontinental Consultants & Technocrats P Ltd [2013(29) STR 9];
- (xi) that they had filed statutory ST-3 returns by making true and correct disclosures and paid service tax on due date; that penalty under section 76 and 77, is not imposable;

4. Personal hearing in the matter was granted on 10.10.2017, 14.11.2017 & 30.11.2017. The appellant however vide their letter dated 12.12.2017, informed that they wished to waive the personal hearing and requested that a speaking order be passed in the matter.



5. I have gone through the facts of the case, the grounds of appeal etc.. I find that the question to be decided is whether the appellant is liable to pay service tax on the expenses incurred by AMA in respect of which they received reimbursements, after adding the same to the taxable value in respect of the period from April 2014 to March 2015.

6. The allegation against the appellant is that they had not included the value of expenses incurred, for which they had received reimbursements, in the taxable value in respect of the taxable service viz Commercial Training or Coaching Centre Service, while discharging the service tax. The adjudicating authority has given the below mentioned findings:

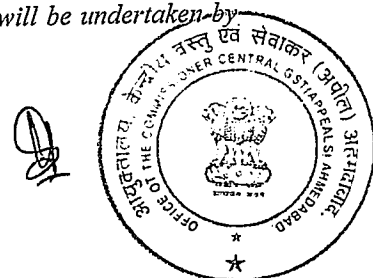
- there is no dispute that the service rendered by AMA was not covered under the exemption specified under clause(i) of section 66D, nor the negative list given under section 66D carries any mention of non commercial or charitable organizations of the society;
- that to be considered as a *pure agent*, a service provider is required to pass the whole test as specified under the eight clauses as well as explanation-1, listed out under the said rule 5(2), *ibid*; that the appellant does not satisfy the criteria of being a 'pure agent';
- that the expenses cannot be considered in solitude and each indiscernibly forms part of the activities undertaken by AMA in providing taxable services; that the said expenses incurred by AMA and reimbursed by service recipients are part and parcel of the taxable services rendered by AMA and hence would form part of the taxable value and is also liable to service tax.

7. I would now like to discuss the averments raised by the appellant, one after the other. The appellant has stated that they are a registered society & a charitable trust, covered under society's registration act and Bombay Charitable Trust Act; that they are not a commercial concern; that Government of Gujarat [GoG] and the appellant had entered into MoU on 24.2.2004, through its Trade and Commerce Commissionerate to set up a Centre for International Trade to be called '*GoG-AMA Centre for International Trade*'; that on going through the MoU it is evident that the appellant is an implementing agency of welfare schemes of the GoG by making use of grants in aid; that there is no service providers and service recipient relationship between AMA and GoG. As a furtherance to this argument, they have also relied upon the case of M/s. APITCO [2010(20) STR 475(Tri-Bang)]. I find that Commercial Training or Coaching as per Section 65(26) of the Finance Act, 1994, was amended to substitute the word "commercial concern" with the term "any person" w.e.f. 1.5.2006. Further, an explanation was retrospectively added, vide Finance Act, 2010, to include a Trust or a society or similar other organization carrying on its activities with or without profit motive within the expression 'commercial training or coaching'. Further on going through the MoU entered into by the appellant and the Government of Gujarat, a copy of which has been attached with the appeal papers, the following forms part of the memorandum, viz:

"3. GoG and AMA have jointly decided to start a Centre for International Trade. This Centre will be called 'GoG-AMA Centre for International Trade', and will be located at AMA Complex. Broadly speaking, GoG-AMA centre will aim at a) helping business understand WTO rules; b) strengthening enterprise competitiveness; and developing new trade promotion strategies.

For achieving the objectives stated above, the following types of activities will be undertaken by GoG-AMA Centre.

- i) *Development of trade support services*
- ii) *Trade information*
- iii) *Human resource development*
- iv) *Needs assessment and programme design for trade promotion*



- v) Creating awareness and understanding the impact and implication of WTI;
- vi) Build a library of trade related books and research papers including WTO/IPR
- vii) Conduct training programmes, conferences and seminars on matters related to international trade
- viii) Support research in the field of international trade with special focus on products and services of interest to Gujarat.

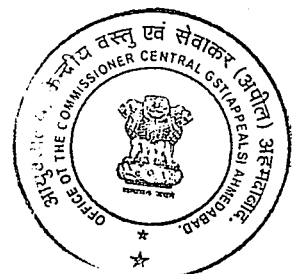
The scope of activities shall be expanded further as and when required.

4. For the purpose of achieving the objectives of GoG-AMA Centre and carrying out the programmes and activities in 3 above, GoG will give to AMA; an amount of Rs. 25,00,000. AMA as per its policy would keep Rs. 15,00,000 as Corpus Fund and Rs. 10,00,000 for organizing various seminars and workshops; purchasing books and periodicals; computer and other equipment for setting up the Centre.

In the second year onwards, the interest accrued from the corpus as well as the contributions received for separate events will be used for the activities and programmes of the Centre."

Grants-in-aid are payments in the nature of assistance, donations or contributions made by one government to another government, body, institution or individual. The State Governments also disburse grants-in-aid to agencies, bodies and institutions such as universities, hospitals, co-operative institutions and others. The grants so released are utilized by these agencies, bodies and institutions for meeting day-to-day operating expenses and for creation of capital assets, besides delivery of services. On going through the above MoU, entered into by the appellant with the GoG, it nowhere supports the claim of the appellant that the funds provided by the Government of Gujarat were in the nature of *grants in aid*. Further no documentary evidence is produced, to support this claim. Even otherwise, as per para 19.1 of the impugned OIO dated 28.2.2017, the nature of reimbursed expenses were not only in respect of Government of Gujarat but was also in respect of certain *Banks, private organizations*, etc. Therefore, I do not find the any merit in the argument of the appellant. Further, I find that the reliance of the appellant on the case of M/s. APITCO [2010(20) STR 475(Tri-Bang)], would not be of any help since the Hon'ble Tribunal had held as follows [operating part]

6. We have given careful consideration to the submissions. It is not in dispute that the assessee-company had implemented welfare schemes for the Central and State governments for the benefit of the poor or otherwise vulnerable/weaker sections of the society and collected grants-in-aid from the governments concerned. It is not in dispute that these grants-in-aid had been totally utilized for implementing the welfare schemes. Nothing over and above these grants-in-aid was received by the assessee from any of the governments. In other words, the assessee did not receive any consideration for "any service" to the governments. Therefore, we hold that, in the implementation of the Governmental schemes, the assessee as implementing agency did not render any taxable "service" to the government. The department seems to be considering the Governments to be "clients" of APITCO. The question now is whether there was "service provider-client" relationship between the assessee and the governments. Here, again, the nature of the amounts paid by the governments to the assessee is decisive. A client must not only pay the expenses of the service but also the consideration or reward for the service to the service provider. Admittedly, in the present case, there was no payment, by any government to the assessee, of any amount in excess of what is called "grant-in-aid". Thus any service provider-client relationship between the assessee and the governments is ruled out. It is true that the assessee had executed the governmental schemes mainly through their engineers (technocrats) but this was not enough for the revenue to bring the assessee within the ambit of "scientific or technical consultancy" as clearly held by this Bench in the case of Administrative Staff college of India (supra). An organization rendering "scientific or technical consultancy" service under Section 65(105)(za) of the Finance Act 1994 must be a science or technology institution. The assessee-company has not been shown to be such an institution. Moreover, the revenue has failed to show that any scientific or technical advice or consultancy or assistance was rendered by the assessee to the governments. Many of the activities in question, such as micro-enterprises development, training programmes, project planning, infrastructure planning etc., are apparently in the nature of projects involving application of social science principles. The revenue has not shown that any techniques or principles of pure and applied sciences were applied in the implementation of the governmental schemes by the assessee. In the case of Administrative Staff College of India (supra), this Bench held that, as the research activities of the assessee (Administrative Staff College) were related to social science, they would not be within the ambit of "scientific or technical consultancy" and hence no service tax could be levied under that category, which view is squarely applicable to the facts of the present case. The view taken by



the Tribunal in the above case stood affirmed by the Apex Court in the above case with the dismissal of the department's Civil Appeal filed against the Tribunal's Order. [emphasis supplied]

8. The appellant's contention after relying on their own case reported at [2009(14) STR 171], is they are not a commercial concern; that the programmes conducted by them are in the nature of continuing education. The contention is already answered by the adjudicating authority in para 16 of the impugned OIO. I agree with the findings of the adjudicating authority in this regard and reject the contention of the appellant as the appellant has not produced anything to counter the stand adopted by the adjudicating authority.

9. The appellant has also relied on the case of Intercontinental Consultants and Technocrats Private Limited [2013(29) STR 9(Del)], wherein the Delhi High Court had in respect of Rule 5 of the Service Tax (Determination of Value) Rules, 2006, had held as follows:

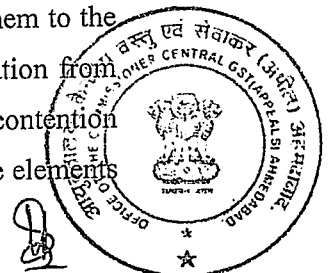
We are, therefore, undoubtedly of the opinion that Rule 5(1) of the Rules runs counter and is repugnant to Sections 66 and 67 of the Act and to that extent it is ultra vires. It purports to tax not what is due from the service provider under the charging Section, but it seeks to extract something more from him by including in the valuation of the taxable service the other expenditure and costs which are incurred by the service provider "in the course of providing taxable service". What is brought to charge under the relevant Sections is only the consideration for the taxable service. By including the expenditure and costs, Rule 5(1) goes far beyond the charging provisions and cannot be upheld. It is no answer to say that under sub-section (4) of Section 94 of the Act, every rule framed by the Central Government shall be laid before each House of Parliament and that the House has the power to modify the rule. As pointed out by the Supreme Court in Hukam Chand v. Union of India, AIR 1972 SC 2427 :-

"The fact that the rules framed under the Act have to be laid before each House of Parliament would not confer validity on a rule if it is made not in conformity with Section 40 of the Act."

Thus Section 94(4) does not add any greater force to the Rules than what they ordinarily have as species of subordinate legislation.

I find that the adjudicating authority has in para 22.4 given his findings on the issue. I agree with the findings. Further, I would also like to add that the department has already filed an appeal before the Hon'ble Supreme Court of India against the said judgement which has been admitted as reported at [2014 (35) STR J99 (SC)]. It has already been held by the Hon'ble Supreme Court of India in the case of West Coast Paper Mills [2004(164)ELT375] that when appeal is filed and admitted in the Supreme Court, correctness of the case is in jeopardy.

10. The appellant has finally contended that no penalty is imposable since they had filed the statutory ST-3 returns by making true and correct disclosures and paid service tax. I find that penalty under sections 76 and 77(2) of the Finance Act, 1994 has been imposed on the appellant. The findings of the adjudicating authority for imposing the penalties are that the appellant failed to determine the correct and true gross value of the services provided; that they failed to correctly discharge the service tax; that there was non/short payment of service tax on reimbursed expenses; that they failed to self assess the true and correct tax liability; that they failed to disclose full and correct information about the value of service provided by them to the department; that there was a deliberate withholding of essential and material information from the department about the service provided and value realized. Hence, the appellants contention that true and correct disclosures were made in the returns, is not true. I find that all the elements



are satisfied for imposing the penalty against the appellant under sections 76 and 77(2) of the Finance Act, 1994 and therefore the penalty imposed on the appellant is upheld.

11. In view of the foregoing, I uphold the impugned OIO dated 28.2.23017 and reject the appeal.

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

उमा शंकर

(उमा शंकर)

आयुक्त (अपील्स)

Date : 19.1.2018

Attested

Vinod Lukose

(Vinod Lukose)
Superintendent (Appeal-I),
Central Excise,
Ahmedabad.

By RPAD.

To,

M/s. Ahmedabad Management Association,
Torrent AMA Centre,
Core Management House,
ATIRA Complex,
Dr. Vikram Sarabhai Marg,
Ahmedabad- 380 015

Copy to:-

1. The Chief Commissioner, Central Excise, Ahmedabad Zone .
2. The Principal Commissioner, Central Excise, Ahmedabad South.
3. The Deputy/Assistant Commissioner, Central Excise Division-VI, Ahmedabad South
4. The Assistant Commissioner, System, Central Excise, Ahmedabad South.
5. Guard File.
6. P.A.



