



सत्यमेव जयते

केंद्रीय कर आयुक्त (अपील)

O/O THE COMMISSIONER (APPEALS), CENTRAL TAX,

केंद्रीय कर भवन,
सातवीं मंजिल, पोलिटेकनिक के पास,
आम्बावाडी, अहमदाबाद-380015

7th Floor, GST Building,
Near Polytechnic,
Ambayadi, Ahmedabad-380015

☎ : 079-26305065

टेलिफैक्स : 079 - 26305136



रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या : File No : V2(ST)/68/Ahd-II/2017-18
Stay Appl.No. NA/2017-18

58670590

ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-EXCUS-001-APP-259-2017-18
दिनांक Date : 22-1-2018 जारी करने की तारीख Date of Issue

25/1/2018

श्री उमा शंकर आयुक्त (अपील) द्वारा पारित
Passed by Shri. Uma Shanker, Commissioner (Appeals)

ग Assistant Commissioner, केन्द्रीय कर, Ahmedabad-South द्वारा जारी मूल आदेश सं SD-05/III/DKJ/DC/Division-II/2016-17 दिनांक: 14/3/2017, से सृजित

Arising out of Order-in-Original No. SD-05/III/DKJ/DC/Division-II/2016-17 दिनांक: 14/3/2017 issued by Assistant Commissioner, Central Tax, Ahmedabad-South

घ अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent
Indian Institute of Management.
Ahmedabad

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 :

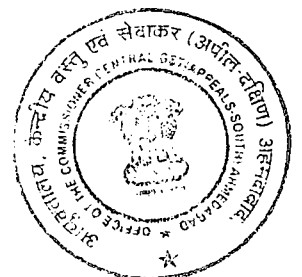
(ii) यदि माल की हानि के मामले में जब ऐसी हानि कारखाने से किसी भण्डागार या अन्य कारखाने में या किसी भण्डागार से दूसरे भण्डागार में माल ले जाते हुए मार्ग में, या किसी भण्डागार या भण्डार में चाहे वह किसी कारखाने में या किसी भण्डागार में हो माल की प्रक्रिया के दौरान हुई हो।

(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.

(b) 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.

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

... 2 ...



(ख) भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित माल पर या नाल 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।

(b) 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.

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

(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.

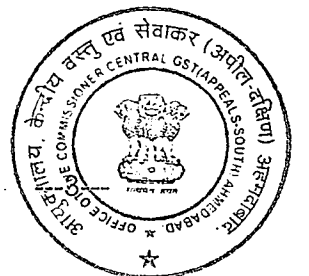
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील:-
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(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) 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, मेघानी नगर, अहमदाबाद-380016

(a) 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.



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 Appellant 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।

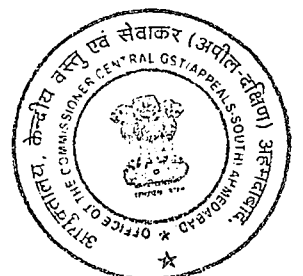
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT.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

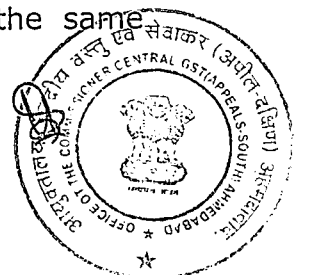


Brief Facts :

This appeal has been filed by M/s. Indian Institute of Management, Vastrapur, Ahmedabad-380015 (hereinafter referred to as "the appellant") against the Order-in-Original No. SD-05/11/DKJ/DC/Division-II/16-17 dated 14.03.2017 (hereinafter referred to as "the impugned order") passed by the Deputy Commissioner, Service Tax, Division-V, Ahmedabad (hereinafter referred to as "the adjudicating authority").

2.1 Brief facts of the case are that the appellant is holding the Service Tax Registration No.AAATI1247FST001 and are engaged in providing services of "management or business consultant service, mandap keeper service, manpower recruitment/supply agency service, health club". A show cause notice dated 29.09.2014 issued for the period 2009-10 to 2013-14 for non payment of service tax of Rs. 79,57,780/- on 'Placement Fees' collected from students was adjudicated and confirmed along with imposition of penaly, by the Commissioner of Service Tax, Ahmedabad vide Order-in-Original No. AHM-SVTAX-000-COM-007-15-16 dated 20.11.2015. Demand for the subsequent period 2014-15, demanding service tax of Rs. 25,32,564/- has been confirmed along with imposition of penalties under Sections 77(2) and 76 of Finance Act, 1994, by adjudicating authority vide impugned OIO, holding that held that the placement fees collected from students by the appellant falls under the erstwhile category of "Manpower Recruitment Agency" services and as service in terms of section 65(B)(44) of the Finance Act, 1994.

3. Being aggrieved, the appellant has filed an appeal on 18.05.2017 wherein it is contended that the fees that they are collecting from their students is a part & parcel of the education service and they are not separately charging any fees and thus bifurcation of the fees & demand of service tax under the category of Manpower recruitment service is not tenable; that the services they are rendering are of the nature of auxilliary educational services, which are exempted vide Notification No. 25/2012 dated 20.06.2012; that department has already issued another SCN No. STC/4-81/O&A/2015-16 demanding service tax on the student fees by covering under "commercial training and coaching services" and hence issue of present SCN amounts to demanding service tax twice on the same student fees.



4. A personal hearing in the matter was held on 14.11.2017 and Shri Vipul Kandhar, chartered accountant appeared on behalf of the appellant and reiterated the grounds of appeal.

DISCUSSION AND FINDING

5.1 Question to be decided is whether or not placement fees collected from students is chargeable to service tax?. Adjudicating authority has confirmed the demand under the category of service as "Manpower Recruitment or Supply Agency Service", however appellant has argued that placement service offered by them is classifiable as "auxiliary educational service" eligible for Mega exemption Notification No. 25/2012-ST."

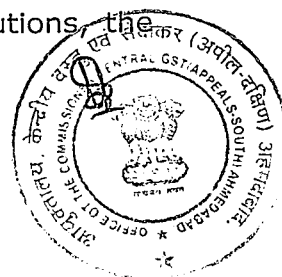
5.2 I find that the appellant had collected charges from their students towards Registration for placement for allowing the student to take part in the recruitment process conducted by the appellant mostly at their campus, on completion of his or her studies. This collection of Registration fee by the appellant from their students in itself does not seem to comprise as Manpower Recruitment Agency Service as alleged in the impugned order by the Adjudicating Authority.

5.3 Consequent to the introduction of Finance Bill, 2012, the Negative list of Services was introduced as Section 66D of the Finance Act, 1994, effective from 01.07.2012. Accordingly, the Service tax administration shifted from selective taxation to comprehensive taxation, without reference to specific head of any service. Accordingly, all services pertaining to education, commercial training or coaching centre services, etc. became taxable except the below-mentioned Services indicated at Section 66D (I) of the Finance Act, 1994 -

"Services by way of :-

- (i) *Pre-school education and education up to higher secondary school or equivalent;*
- (ii) *Education as a part of a curriculum for obtaining a qualification recognised by any law for the time being in force;*
- (iii) *Education as a part of an approved vocational education course."*

5.4 Therefore, the education provided by the appellant in this case, being a part of a curriculum for obtaining a qualification recognised by law, was covered under Negative list of services. While the Negative list exempted the basic education service provided by such educational institutions, the



Board vide Sl. No. 9(a) of Mega Notification No. 25/2012-ST dt. 20.06.2012.

9. Services provided **to or by** an educational institution in respect of education exempted from service tax, by way of,-

(a) **auxiliary educational services; or**

(b) **renting of immovable property;"**

Appellant is imparting training and grooming the personality so as to face the prospective recruiters with confidence. Therefore, I am of considered view that placement service provided is covered under auxiliary educational services" defined in definition clause (f) of paragraph (2) of Mega Exemption Notification No. 25/2012-ST."

6. Subsequently Entry No. 9 of Mega Exemption Notification was amended vide Notification No. 3/2013-ST Dated 01.03.2013 effective from 01.04.2013. Amended Serial no. 9 of mega exemption notification reads as follows:

After first Amendment

"9. Services provided **to** an educational institution in respect of education exempted from service tax, by way of,-

(a) **auxiliary educational services; or**

(b) **renting of immovable property;"**

Thus, with effect from 1st April 2013, the auxiliary education services provided by all educational institutions are taxable irrespective of exemption of their basic education services from the service tax.

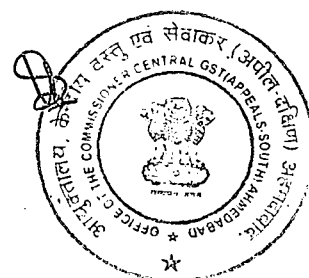
7. After second amendment

Vide Notification No. **6/2014-ST Dated. 11-7-2014** amending Notification No. 25/2012-ST Dated. 20-6-2012 (Effective From 11-7-2014).For entry 9, the following entry was substituted, in Notification No. 25/2012-ST -

"9. Services provided,-

(a) **by an educational institution to its students, faculty and staff;**

(b) **to an educational institution, by way of,-**



(i) transportation of students, faculty and staff;

(ii) catering, including any mid-day meals scheme sponsored by the Government;

(iii) security or cleaning or house-keeping services performed in such educational institution;

(iv) Services relating to admission to, or conduct of examination by, such institution;"

Due to above amendment from 11.07.2014, Services provided by an educational institution to its students, faculty and staff were exempted. Placement service offered became exempted.

8. SUMMARY OF TAXABILITY OF PLACEMENT SERVICE

SCN demand covers period from 01.04.2014 to 31.03.2015.

Period	Sr. 9 of Notification 25/2012-ST amended by No.	Whether placement fees exempted under said amended Section of Noti. 25/2012	Whether SCN period is covered
01.07.2015 31.03.2013	Original Notification in force	Exempted	NO
01.04.2013 31.03.2014	3/2013-ST Dated. 01.03.2013.	Taxable	NO
01.04.2014 to 10.07.2014	3/2013-ST Dated. 01.03.2013.	Taxable	YES
11.07.2014 to 31.03.2015	6/2014-ST Dated. 11-7-2014	Exempted	YES

9.1 In view of above I uphold the impugned OIO confirming service tax liability with applicable interest u/s 75, for period prior from 01.04.2014 to 10.07.2014. I uphold the proportional penalty in proportion to amount



confirmed for period from 01.04.2014 to 10.07.2014 as far it relates penalty imposed under section 76 and 77(2) of FA, 1994.

9.2 I set aside the OIO confirming the demand and all proportional penalty for period from 11.07.2014 to 31.03.2015 The appeal filed by the appellant is hereby allowed partially as stated above.

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

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

उमा शंकर

(उमा शंकर)

केन्द्रीय कर आयुक्त (अपील्स)

ATTESTED

R.R. Patel
(R.R. PATEL)

SUPERINTENDENT (APPEAL),

CENTRAL TAX, 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 Asst. Commissioner, Central Tax Div- VI,, Ahmedabad- SOUTH,
- 4) The Asst. Commissioner(System), Central Tax, Ahmedabad- SOUTH
- 5) Guard File.
- 6) P.A. File.

