



सत्यमेव जयते

केंद्रीय कर आयुक्त (अपील)

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

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



☎ : 079-26305065

टेलिफैक्स : 079 - 26305136

रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या : File No : V2(ST)/66/Ahd-I/2017-18
Stay Appl.No. NA/2017-18

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1542

ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-EXCUS-001-APP-351-2017-18
दिनांक Date : 26-02-2018 जारी करने की तारीख Date of Issue

16/3/2018

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

ग Arising out of Order-in-Original No. AHM-SVTAX-000-JC-002-17-18 दिनांक: 29/5/2017 issued by
Joint Commissioner, Central Tax, Ahmedabad-South

घ अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent
M/s. Indo German Tool Room
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 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 हैं।

(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.

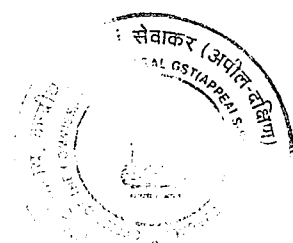
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील:-
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(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 मेटल हॉस्पिटल 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 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।

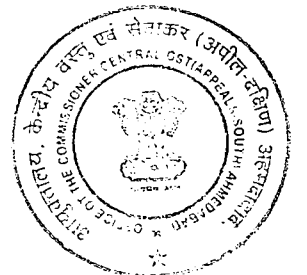
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT.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



3

ORDER IN APPEAL

M/s Indo German Tool Room, Plot No. 5003, Phase IV, GIDC, Mehmdavad Road, Vatva, Ahmedabad- 382 445 (STR AAAJI 0033P SD001) (hereinafter referred to as 'appellants') have filed the present appeals against the Order-in-Original number AHM-SVTAX-000-JC-002-17-18 dated 29.05.2017 (hereinafter referred to as 'impugned orders') passed by the Joint Commissioner, Service Tax HQ, Ahmedabad (hereinafter referred to as 'adjudicating authority').

2. The facts of the case, in brief are that appellant are Government of India Society under the Ministry of Micro, Small & Medium Enterprise. Appellant had provided short term (Non formal courses where Diploma certificate is issued by appellant) training/coaching neither recognized by the All India Council for Technical Education (AICTE) nor affiliated to any recognized University, in the field of tool design and had not paid service tax of Rs. 1,08,92,405/- for period April, 2011 to March, 2015. It appeared to DGCEI, Ahmedabad that appellant was "Commercial Training or Coaching Center" as defined u/s 65(27) of FA, 1994 and service being provided by them were taxable under erstwhile Section 65(105)(zxc) of FA, 1994, therefore SCN dated 21.10.2016 was issued. From 01.07.2012 also, said services appeared taxable as the same were excluded from the negative list of services enlisted u/s 66D of, FA, 1994.

3. Adjudicating authority vide impugned OIO, confirmed the duty of Rs. 1,08,92,405/- u/s 73(1) with interest liability u/s 75. Penalty of Rs. 1,08,92,405/- u/s 78 and Rs. 10,000/- u/s 77(2) was imposed on appellant .

4. Being aggrieved with the impugned order, the appellants preferred an appeal on 28.07.2017 before the Commissioner (Appeals-II), Ahmadabad wherein it is contended that they are Government organization and as explained in negative list of service u/s 66D of FA, 1994 services provided by Government or Local authority are not taxable as education service provided by appellant falls under negative list of services.

5. Personal hearing in the case was granted on 22.01.2018. Shree Virang Mehta, CA appeared before me and reiterated the grounds of appeal. He stated that they would submit additional submission within two days and same was submitted on 25.01.2018 where by following letters were submitted-

- i. Development Commissioner MSME dated 10.09.2015



- ii. Additional Secretary & Development Commissioner MSME dated 07.10.2015
- iii. Copy of letter from office of Advisor to the Prime Minister dated 06.09.2012
- iv. Copy of application made to Government for provision for Vocational Training Program.

DISUSSION AND FINDINGS

6. I have carefully gone through the facts of the case on records, grounds of appeal in the Appeal Memorandum and oral/written submissions made by the appellants, evidences produced at the time of personal hearing. I have also perused above letters submitted vide letter dated NIL submitted on 25.01.2017.

7 Appellant case covering period from 01.04.2011 to 31.03.2015, is covered under two category-

- (a) pre-negative period i.e. prior to 01.07.2012 and
- (b) post-negative period i.e. post 01.07.2012.

8.1 Appellant has not submitted any defense reply/argument with regard to pre-negative period. In said pre-negative no exemption is available. Non-formal course being offered is not recognized by any law being force in India and said course being not leading to recognized degree /diploma offered by recognized university, it is liable for service tax for pre-negative period under "Commercial Training or Coaching Center" as defined u/s 65(27) of FA, 1994 and service being provided by them were taxable under erstwhile Section 65(105)(zzc) of FA, 1994. I hold that appellant is liable for service tax payment for said pre-negative period.

8.2 For post negative period appellant has stated that they are not required to pay service tax in view of Circular No. 164/15/2012-ST F. No. 356/17/2012 - TRU Government of India Ministry of Finance Department of Revenue, 28th August, 2012 which is reproduced as below-

"Subject: service tax - vocational education/training course -- regarding.

Clarification has been sought in respect of levy of service tax on certain vocational education/training/ skill development courses (VEC) offered by the Government (Central Government or State Government) or local authority themselves or by an entity independently



established by the Government under the law, as a society or any other similar body.

2. The issue has been examined. When a VEC is offered by an institution of the Government or a local authority, question of service tax does not arise. In terms of section 66D (a), only specified services provided by the Government are liable to tax and VEC is excluded from the service tax.

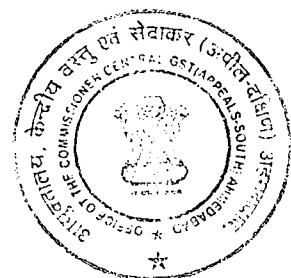
3. When the VEC is offered by **an institution, as an independent entity in the form of society** or any other similar body, service tax treatment is determinable by the application of either sub-clause (ii) or (iii) of clause (L) of section 66D of the Finance Act, 1994. Sub-clause (ii) refers to "qualification recognized by any law" and sub-clause (iii) refers to "approved VEC". In the context of VEC, qualification implies a Certificate, Diploma, Degree or any other similar Certificate. The words "recognized by any law" will include such courses as are approved or recognized by any entity established under a central or state law including delegated legislation, for the purpose of granting recognition to any education course including a VEC."

9. APPLICABILITY OF PARAGRAPH- 2 OF CIRULAR

When a VEC is offered by the Government or a local authority, service tax is not leviable as the said Service is covered under the Negative list under section 66D of the Finance Act, 1994, i.e. not chargeable to service tax. As per Section 66D (a), most services provided by the Central Government or state government or local authorities are not chargeable to service tax. Since appellant is neither Government nor local authority para-2 of above circular is not applicable.

10. APPLICABILITY OF PARAGRAPH- 3 OF CIRULAR

10.1 Now let us see whether paragraph -3 of above circular is applicable to appellant or not. When a VEC is offered by **an entity independently established by the Government under the law, as a society** or any other similar body, service tax treatment has to be determined in a different manner. VEC is offered by appellant, as an independent entity in the form of society, service tax treatment is determinable by the application of either



sub-clause (ii) clause (L) or (iii) of clause (L) of Section 66D of negative List of services. -

A. sub-clause (ii) of clause (L) of section 66D or of the Finance Act, 1994.

B. sub-clause (iii) of clause (L) of section 66D of the Finance Act, 1994

10.2 (A).....Sub Clause (ii) of clause (L) of section 66D provides that services provided by way of education as a part of a curriculum for obtaining a qualification **recognized by any law** for the time being in force are not chargeable to service tax.

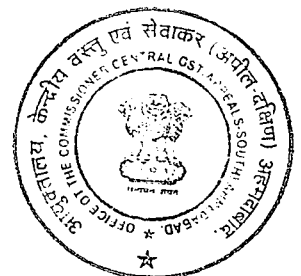
The Circular provides that in the context of VEC, qualification implies a Certificate, Diploma, Degree or any other similar Certificate. The words "**recognized by any law**" will include such courses as are approved or recognized by any entity established under a central or state law including delegated legislation, for the purpose of granting recognition to any education course including a VEC.

Further Clarification regarding this has been given in the Education Guide dated June.20, 2012 issued by CBEC:

4.12.1 What is the meaning of 'education as a part of curriculum for obtaining a qualification recognized by law'?

*"It means that only such educational services are in the negative list as are related to delivery of education as 'a part' of the curriculum that has been prescribed for obtaining a qualification prescribed by law. It is important to understand that to be in the negative list the service should be delivered as part of curriculum. Conduct of degree courses by colleges, universities or institutions which lead grant of qualifications recognized by law would be covered. Training given by private coaching institutes would not be covered as such training does not lead to grant of a recognized qualification. Since degree or certificates awarded by appellant are not recognized by any law for time being in force, **the appellant is not eligible for exemption as stated for sub-clause (ii) of clause (L) of section 66D or of the Finance Act, 1994.**"*

10.3 (B).....Sub Clause (iii) of clause (L) of section 66D provides that services provided by way of education as a part of an **approved vocational education course** are not chargeable to service tax.



Section 65B (11) of Finance Act, 1994 provides the definition of **approved vocational course** as-

- a. a course run by an industrial training institute or an industrial training centre affiliated to the National Council for Vocational Training offering courses in designated trades notified under the Apprentices Act, 1961; or
- b. a Modular Employable Skill Course, approved by the National Council of Vocational Training, run by a person registered with the Directorate General of Employment and Training, Union Ministry of Labour and Employment; or
- c. a course run by an institute affiliated to the National Skill Development Corporation set up by the Government of India

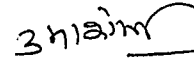
Appellant does not fall under any of the above criteria a, b, or c stated above, therefore it proves that appellant is not providing **approved vocational course**, therefore Sub Clause (iii) of clause (L) of section 66D is not applicable to appellant.

Hence, in view of above discussion I am of considered view that non formal courses are offered by appellant are neither recognized nor approved by any entity established under a Central or State law therefore it would be covered under Service Tax. I hold that appellant is required to pay tax on non formal coursed offered during the period covered in above SCN.

11. In view of above, appeal filed by the appellants is rejected and impugned OIO is upheld.


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)

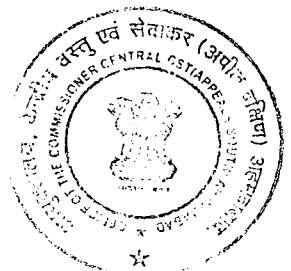
केन्द्रीय कर आयुक्त (अपील्स)

ATTESTED


(R.R. PATEL)

SUPERINTENDENT (APPEAL),

CENTRAL TAX, AHMEDABAD



To,

M/s Indo German Tool Room,
Plot No. 5003, Phase IV,
GIDC, Mehmdavad Road,
Vatva, Ahmedabad- 382 445

Copy to:

- 1) The Chief Commissioner, Central Tax, Ahmedabad South .
- 2) The Commissioner Central Tax, CGST,Ahmedabad South.
- 3) The Asst. Commissioner, Central Tax, Div-V, Ahmedabad South
- 4) The Asst. Commissioner(System), Hq, Ahmedabad South.
- 5) Guard File.
- 6) P.A. File.

