

 सत्यमेव जयते	<b>केंद्रीय कर आयुक्त (अपील)</b>	
<b>O/O THE COMMISSIONER (APPEALS), CENTRAL TAX,</b>		
केंद्रीय कर शुल्कभवन, सातवीं मंजिल, पोलिटेकनिक के पास, आम्बावाडी, अहमदाबाद-380015		
7 <sup>th</sup> Floor, Central Excise Building, Near Polytechnic, Ambavadi, Ahmedabad-380015		
☎ 079-26305065		टेलिफैक्स : 079 - 26305136

क फाइल संख्या : File No : V2(ST)0264/A-II/2016-17 / MSH3 to IShr  
 ख अपील आदेश संख्या : Order-In-Appeal No. AHM-EXCUS-001-APP-083-17-18  
 दिनांक Date : 25-09-2017 जारी करने की तारीख Date of Issue 10-10-17

श्री उमा शंकर, आयुक्त (अपील) द्वारा पारित

Passed by Shri Uma Shanker Commissioner (Appeals)

ग Arising out of Order-in-Original No SD-02/39/AC/2016-17 Dated 27.01.2017  
 Issued by Assistant Commr STC, Service Tax, Ahmedabad

ध अपीलकर्ता का नाम एवं पता  
Name & Address of The Appellants

**M/s. M Square Business Solutions Ltd  
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 :-

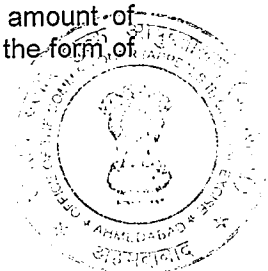
वित्तीय अधिनियम, 1994 की धारा 86 के अंतर्गत अपील को निम्न के पास की जा सकती:-  
 Under Section 86 of the Finance Act 1994 an appeal lies to :-

पश्चिम क्षेत्रीय पीठ सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण ओ. 20, न्यू मैनटल हास्पिटल 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 प्रतियों (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 लगा होना 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 39फ के अंतर्गत वित्तीय(संख्या-2) अधिनियम 2014(2014 की संख्या 29) 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

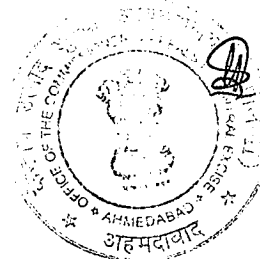
M/s M Square Business Solutions Ltd, B Wing, 416, Mardia Plaza, C G Road, Ahmedabad (henceforth, "appellant") has filed the present appeal against the Order-in-Original No.SD-02/39/AC/2016-17 dated 27.1.2017 (henceforth, "impugned order") passed by the Assistant Commissioner, Service Tax, Division-II, Ahmedabad (henceforth, "adjudicating authority").

2. The facts giving rise to this appeal are that the appellant, having service tax registration, entered into agreements with various foreign based colleges regarding enrollment of Indian students for admission to these colleges. For this, the appellant charged the colleges a mutually agreed percentage of the tuition fees deposited by the students in the colleges for the courses enrolled. It appeared that the appellant's activity amounted to provision of service on commission basis and were taxable under Business Auxiliary Service [as per Sec.65(105)(zzb) of the Finance Act, 1994]. Further, it appeared that the appellant was acting as an 'intermediary' as defined in clause 2(f) of the Place of Provision of Services Rules, 2012 (POPS rules) and therefore, in terms of rule 9 of POPS rules, place of provision of service was the location of service provider. The service provider being located in India, it appeared that service tax was payable by the appellant.

2.1 Since appellant was not paying service tax on the activity described, a show cause notice was issued and came to be decided by the adjudicating authority vide impugned order by confirming the service tax demand of Rs.37,24,185/- for the years 12-13, 13-14 and 14-15. In addition, interest was ordered to be recovered and equal penalty was imposed. The present appeal has been filed against this order of the adjudicating authority.

3. The main grounds of appeal, in very brief, are as follows-

3.1 Appellant states that his role is not to identify students on one to one basis but to promote the Canadian colleges; that the appellant is not facilitating service between the student and college but provides an independent service of promoting and marketing the colleges; that the income is on winning basis, i.e., on the no. of students getting enrolled from India; that the appellant gets its return even when students from Indian origin get directly enrolled to these colleges; that for the services rendered by the appellant, the ultimate beneficiary is Canadian colleges. Therefore, according to appellant, the services are



classifiable under business support service and as a result, demand made under business auxiliary service is not tenable.

3.2 Appellant argues that rule 3 of POPS rules is applicable, and not rule 9, as the appellant's services are directly provided to the Canadian colleges, i.e., the appellant is independently providing marketing services to these colleges.

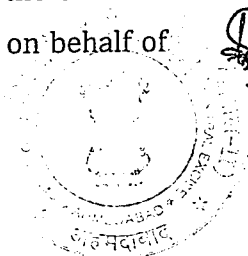
3.3 Appellant states that services rendered is export of marketing and back office services to these colleges in terms of rule 6A of the Service Tax Rules, 1994 (Service Tax Rules)

3.4 Appellant contends that even if the services are classified under commission agent service, service provided to foreign entity by a commission agent was exempted from payment of service tax upto Sep 2014. (Became taxable vide Notification No.14/2014-ST)

3.5 Appellant also argues that the entire demand is time barred and penalty under section 78 cannot be imposed.

4. In the personal hearing held on 13.9.2017, Shri Vipul Khandhar, Chartered Accountant and reiterated the grounds of appeal. He submitted that it is a principal to principal arrangement and services fall under Business Support Services and not under Business Auxiliary Services.

5. I have carefully gone through the appeal. It is a fact that the appellant has provided services to foreign based colleges through its division 'Kampus Landing' for enrollment of prospective students for admission to these colleges and consideration received is a commission amount based on certain percentage of the fees paid by the students. The Recruitment Agreement Renewal between Camson College and Kampus Landing suggest that the appellant's job includes to advise, evaluate and screen prospective students, collect from the students on behalf of Camson College the necessary application forms, reports, testimonials, etc.; submit complete documentation to the college promptly; ensure successful enrollment of students. Clearly, the appellant is acting as an agent of the college and providing services on behalf of the college. In addition, the appellant is also supposed to promote Camson College, its programs and other services. Thus, promotion or marketing of services provided by the college is also involved. Similarly, in case of Letter of Agreement given by Capilano University(CapU), the appellant will recruit students directly and will also work with agents within the region to establish to broad agents' network who will also recruit students to CapU, however, in both cases the appellant gets the payment on commission basis. Thus, here also, the appellant has promoted and marketed the services provided by the college and has also provided services to students on behalf of



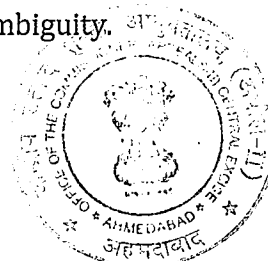
the college. Since *any service in relation to promotion or marketing of service provided by the client* and also *provision of service on behalf of the client* are covered in the definition of Business Auxiliary Service given under section 65(19) of the Finance Act, 1994, services provided by the appellant are appropriately classifiable as Business Auxiliary Services and therefore taxable in terms of section 65(105)(zzb) of the Finance Act, 1994. This was the case before 1.7.2012 when negative list was introduced and service specific definitions were done away with. From 1.7.2012, the activity hitherto classifiable as Business Auxiliary Service became a 'service' in terms of section 65B(44) of the Finance Act, 1994 and taxability depended on place of provision of service.

5.1 The place of provision of a service is determined in accordance with the Place of Provision of Services Rules, 2012 (henceforth, "POPS rules"). I note that and agent who facilitates a provision of service is covered under the definition of 'intermediary' in terms of rule 2(f) of the POPS rules and further, as per rule 9, the place of provision of service shall be the location of the service provider. Therefore, the place of provision of services provided here is in India and hence in taxable territory.

5.2 With regard to the argument that it was export in terms of rule 6A of the Service Tax Rules, I note that one of the conditions for treating the provision of a service as export of service is that the place of provision of service is outside India. Since this is not the case here, the services provided cannot be considered as export of service in terms of rule 6A *ibid*.

5.3 Further, appellant's reference to Notification No.14/2014-ST (effective from 1.10.2014) to state that commission agent service was exempted till 30.9.2014 is in the context of amendment in the definition of 'intermediary' in rule 2(f) of the POPS rules. The change that came from 1.10.2014 was that agent in relation to supply of goods was also included in the definition of intermediary, however, this has no bearing on the present case as it is in relation of provision of service and not supply of goods.

5.4 The appellant has also raised the issue of time barring as according to him there is no suppression of facts or willful misstatement. It is however a fact that during the period Apr-2012 to Mar-2015 (period of dispute) the appellant did not show the commission income in the ST-3 returns filed. The appellant has presented the case as a case of interpretation of law which is not correct. The law relating of place of provision of service or export of services has no ambiguity.



Non declaration of income earned out of services in question is a clear indication of the appellant's intent to evade payment of service tax. The suppression of facts is therefore involved and extended period has been rightly invoked.

6. In view of above, I find no reason to interfere with the impugned order. The appeal is accordingly rejected.

7. 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.

*आशिम*

(उमा शंकर)

केन्द्रीय कर आयुक्त (अपील्स)

Date: 25.09.2017

Attested

*S. Hudda*  
(Sanwarmal Hudda)  
Superintendent  
Central Tax (Appeals)  
Ahmedabad

By R.P.A.D.

To,  
M/s M Square Business Solutions Ltd,  
B Wing, 416, Mardia Plaza, C G Road,  
Ahmedabad

Copy to:

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

