

	केन्द्रीय कर आयुक्त (अपील)	
सत्यमेव जयते	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
 079-26305065		टेलिफैक्स : 079 - 26305136

क फाइल संख्या : File No : V2(ST)0187/A-II/2016-17/1070 to 1074
 ख अपील आदेश संख्या : Order-In-Appeal No..**AHM-EXCUS-001-APP-085-17-18**
 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-02/15/AC/2016-17** Dated **26.09.2016**
 Issued by Assistant Commr **STC**, Service Tax, Ahmedabad

ध 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 मैन्टल हास्पिटल कम्पाउण्ड, मेधाणी 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 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 A2I9k 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 35फ के अंतर्गत वित्तीय(संख्या-2) अधिनियम 2014(2014 की संख्या 25) 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,

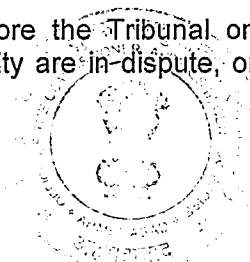
Under Central Excise and Service Tax, "Duty demanded" shall include:

- (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.



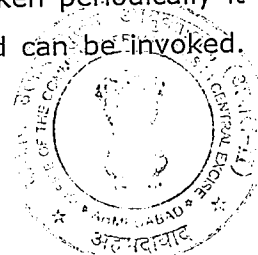
ORDER-IN-APPEAL

1. This appeal was filed by M/s Indian Institute of Management, IIM Road, Vastrapur, Polytechnic, Ahmedabad-380015 (hereinafter referred to as 'the Appellant') against Order-in-Original NO. SD-02/15/AC/2016-17 Dated 26.09.2016 (hereinafter referred to as 'impugned order') passed by the Assistant Commissioner, Service Tax, Division-II, Ahmedabad (hereinafter referred to as 'adjudicating authority').

2. The appellant is engaged in providing the services under the category of "Management or Business Consultancy Services, Mandap keeper Services, Commercial Training and Coaching Services, Manpower Recruitment/Supply agency Services, Health Club & Fitness Services, Renting of Immovable Property and Accommodation Services and holding Service Tax Registration No. AAATI1247FST001.

3. The facts of the case, in brief, are that during the course of CERA Audit for the year 2009-10 to 2013-14, it was noticed that the appellant has an Alumni Association which is an association of persons connected through the website www.iimaalumni.org. The appellant also used to publish magazine which was published thrice every year and sale space in the magazine for the advertisement of job opportunities for the sole benefit of the members of the alumni association. It was further noticed that the appellant had availed CENVAT credit of Rs. 2,63,461/- for the period 2009-10 to June- 2012 on maintenance of the website of IIM alumni association which was exclusively for providing exempted service and as per explanation II of Rule 6(3) of CCR, 2004 credit of input service used exclusively in exempted service shall not be allowed. It was observed by the department that the appellant had continued to follow the same practice of wrong availment of Cenvat Credit of Rs. 35,498/- for the period 2014-15. Accordingly, for the subsequent period 2014-15 a Show Cause Notice dated 08.04.2016 was issued to the appellant proposing recovery of wrongly availed cenvat credit under rule 14 of CCR, 2004 read with proviso to section 73(1) of FA 1994. Interest under rule 14 of CCR 2004 read with section 75 of FA 1994, penalty under rule 15(1) of CCR 2004 read with section 76 of FA 1994, penalty under rule 15(3) of CCR 2004 read with section 78 of FA 1994 was proposed to be imposed.

4. Appellant argued before adjudicating authority that they are providing dutiable and exempted service but not maintaining separate record as they are reversing the proportional credit on exempted service as per rule 6(3) of CCR, 2004. However no records were produced before adjudicating authority to prove that credit taken on input of exempted service was reversed. Moreover it was argued that since regular audit is undertaken periodically it was in knowledge of department hence no extended period can be invoked.



But this argument was turned down by adjudicating authority by observing that, the demand was raised within specified normal period of eighteen months and proposal to invoke the said proviso to Section 73(1) is also justified being a continued offence.

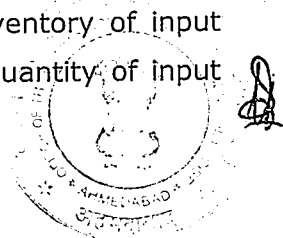
5. Accordingly the adjudicating authority vide impugned order had confirmed the demand of Rs. 35,498/- under rule 14 of CCR, 2004 read with proviso to section 73(1) of FA 1994, and also ordered to pay interest at the appropriate rate under rule 14 of CCR, 2004 read with section 75 of FA 1994. Also imposed equal penalty of Rs. 35,498/- under rule 15(3) of CCR, 2004 read with section 78 of FA 1994 and penalty of Rs. 3,550/- under rule 15(1) of CCR, 2004 read with Section 76 of FA, 1994 .

6. Being aggrieved with the impugned order, the appellant has filed the present appeal on 24.11.2016 followed with written submission on the grounds which are interalia mentioned that the appellant was providing both taxable and exempt services; that the Cenvat credit on website maintenance service was taken for various activities like, Alumni association to share views, updation in management field, articles etc arranged by the appellant; that when appellant had opted for rule 6(3) of CCR, 2004, and proportionally reversed the cenvat credit time to time according to the rule, so there was no question of availing Cenvat credit of the exempted service and separate reversal of cenvat credit, so they have rightly availed the Cenvat credit; that extended period is not sustainable as periodical and regular audit is conducted by department and that penalty under rules 15(1) & 15(3) of CCR 2004 read with respective sections 76 & 78 of FA 1994 can not be imposed.

7. Personal hearing was granted on 21.08.2017. Shri Vipul Khandhar, CA, appeared on behalf of the appellant and reiterated the contents of appeal memorandum.

8. I have carefully gone through the records of the case and the submissions given in the grounds of appeal and citation referred in the appeal. The issue to be decided by me is whether the action of the Adjudicating Authority in disallowing the Cenvat Credit availed by the appellant is in order or not.

9. As per rule 6 of Cenvat Credit Rules, 2004, credit shall not be allowed on input services used exclusively for the provision of exempted service. But, where a provider of output service avails of CENVAT credit in respect of any input services, and provides such output service which are chargeable to duty or tax as well as exempted services, then, the provider of output service shall maintain separate accounts for receipt, consumption and inventory of input service meant for use in providing output service and the quantity of input



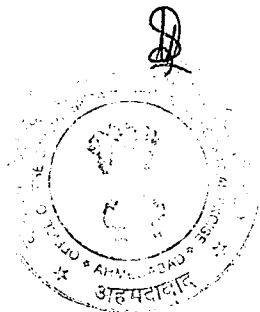
services and take CENVAT credit only on that quantity of input service which is intended for use in providing output service on which service tax is payable. Further, the provider of output service, opting not to maintain separate accounts, shall follow either of the following options, as applicable to him, namely:-

- (i) the provider of output service shall pay an amount equal to six percent. of value of the exempted services; or
- (ii) the provider of output service shall pay an amount equivalent to the CENVAT credit attributable to input services used in, or in relation to, the provision of exempted services subject to the conditions and procedure specified in sub-rule (3A) of Rule 6 of Cenvat Credit Rules, 2004.

10. In view of the facts and discussion herein above, the appellant's claim of compliance of the procedure under Rule 6(3A) *ibid* needs to be re-examined and re-looked into and in the interest of justice, it would be just and proper to remit the matter to the Adjudicating Authority to decide the case afresh so as to verify whether the amount has been reversed by the appellant as per the procedure as prescribed under Rule-6(3A) of Cenvat Credit Rules, 2004 or not, after due compliance of the principles of natural justice and after proper appreciation of the evidences that may be put forth by the appellant before him. Further regarding invoking extended period limitation period I find that adjudicating authority at para 2.2 of impugned OIO has stated that demand was raised within specified normal period of eighteen months. Appellant has also argued that there was no suppression as department was aware of facts as ST-3 return for same has been filed.

11. Therefore, the case is remanded back for verifying the facts whether the appellant has reversed the appropriate amount of cenvat credit as per Rulle-6(3A) of Cenvat Credit Rules, 2004 or not. The appellant is also directed to put all the evidences before the Adjudicating Authority in support of their contention as well as any other details/documents etc. that may be asked for by the Adjudicating Authority when the matter is heard in remand proceedings before the Adjudicating Authority. Adjudicating authority is directed to pass fresh order. These findings of mine are supported by the decision/order dated 03.04.2014 of the Hon'ble High Court, Gujarat in the Tax appeal No.276//2014 in the case of Commissioner, Service Tax, Ahmedabad V/s Associated Hotels Ltd. and also by the decision of the Hon'ble CESTAT, WZB Mumbai in case of Commissioner of Central Excise, Pune-I Vs. Sai Advantium Ltd and reported in 2012 (27) STR 46 (Tri. - Mumbai).

12. The appeal filed by the appellant is disposed off by way of remand in above terms.



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

उमाशंकर
(उमा शंकर)
आयुक्त (अपील्स)

Attested

Vinod Lukose
(Vinod Lukose)
Superintendent (Appeals)
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 Zone.
- (2) The Commissioner, Central Tax, Ahmedabad South.
- (3) The Assistant Commissioner, Central Tax Division-VI, Ahmedabad South.
- (4) The Asstt. Commissioner(System), Central Tax HQ, Ahmedabad.
(for uploading the OIA on website)
- (5) Guard file

