केंद्रीय कर आयुक्त (अपील)

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

सत्यमेव जयते

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

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

☎: 079-26305065

टेलेफैक्स : 079 - 26305136

रजिस्टर्ड डाक ए.डी. द्वारा

6311 to 6315

क फाइल संख्या : File No : V2(ST)14/Ahd-South/2018-19
Stay Appl.No. /2018-19

ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-EXCUS-001-APP-041-2018-19**
दिनाँक Date : **30-08-2018** जारी करने की तारीख Date of Issue 11/9/2018

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

ग Arising out of Order-in-Original No. **02-03/CX-I ahmd/ADC/MK/2018** दिनाँक: **28.02.2018** issued by Addl. Commissioner, [redacted], Central Tax, Ahmedabad-South

ध 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 a 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 प्रकिया 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।

(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 मामलें 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 डयूटी केडिट 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 दिनाँक से तीन मासं 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 रूपये या उससे कम हो तो रूपये 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 अपीलः–
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1944 की धारा 35–बी/35–इ के अंतर्गतः–

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, मेघाणी 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. Registar 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 ओदश 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 हैं।

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 not withstanding 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 अनुसूचि–1 के अंतर्गत निर्धारित किए अनुसार उक्त आवेदन या मूल आदेश यथास्थिति निर्णयन प्राधिकारी के आदेश में से प्रत्येक की एक प्रति पर रू.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 in 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 अपीलो 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."

ORDER IN APPEAL

This appeal has been filed by M/s. Indian Institute of Management Ahmedabad, Dr. Vikram Sarabhai Marg, Near Andhajan Mahamandal, Vastrapur, Ahmedabad 380 015 [for short – 'appellant']against OIO No. 02-03/CX-I Ahmd/ADC/MK/2018 dated 28.2.2018, issued by the Additional Commissioner, CGST, Ahmedabad South Commissionerate (for short – "adjudicating authority'].

2. During the course of audit by CERA, it was noticed that the appellant, engaged in undertaking research projects for **or** on behalf of the other organizations, had recovered fees towards the faculty time, research staff, travel/international travel, computer/interest charges, communication charges, charges for facilities, workshop/programme charges, audit charges for project, usage of space and maintenance/security charges, other charges like project related equipments, database and software, etc. separately; that the consideration intended for the specific project requiring the appellant to submit a research report was a taxable service under Section 66B of the Finance Act, 1994. A show cause notice dated 21.1.2016 was therefore, issued demanding service tax of Rs. 66.08 lacs covering the period from 2012-13 and 2013-14, along with interest and further proposing penalty on the appellant under sections 77 and 78 of the Finance Act, 1994. Thereafter a periodical show cause notice dated 5.4.2016, was issued for the FY 2014-15, demanding service tax along with interest and proposing penalty under section 76 of the Finance Act, 1994.

3. Both these show cause notices were decided vide impugned OIO dated 28.2.2018, wherein the adjudicating authority confirmed the demand along with interest and further proposed penalty under sections 76, 77 and 78 of the Finance Act, 1994.

4. Feeling aggrieved, the appellant has filed this appeal, raising the following contentions:

- that the impugned OIO is not correct and is bad in law;
- that the impugned OIO is hit by **limitation**; that the show cause notice in respect of LAR dated 17.10.2014 was issued on 21.1.2016, received on 1.2.2016, covering the period 2012-13 and 2013-14; that when it was known to the department it cannot claim that there was suppression of facts or misstatement; that since the present demand involves issues of interpretation, taking an interpretation which does not suit the department does not mean there is any kind of willful suppression with an intention to evade payment of service tax; that department had audited their institute and issued an audit report 86/2011-12 covering the period from 2009-2010 and 2010-11; that audit upto March 2009 was completed vide FAR No. 52/2011-12; that in the FAR 86/2011-12, there were no observations and nil report was issued by the department; that relevant extracts of schedules for FY 2009-10 and 2010-11 clearly shows that the appellant had carried out research activities during the relevant period; that therefore extended period cannot be invoked;
- that for their contention regarding non invocation of extended period they would like to rely on the case of CMS Computers P Ltd [2005(182) ELT 20], O K Play (India) Ltd [2005(180) ELT 300], Bell Grantio Ceramica Ltd [2006(198) ELT 161], Sotex [2007(209) ELT 9(SC)], Pushpam Pharmaceutical Company [1995(78) ELT 401], Synthetics and Chemicals Ltd [1992(57) ELT 480], Gammon India Ltd [2002(146) ELT 173], National Steel [2016(332) ELT 477], Mohan Bakers P Ltd [2008(221) ELT 308], Continental Foundation [2007(216) ELT 177], Steelcast Ltd [2009(19) STT 365], Padmini Products[1990(185) ITR 440];
- that they would like to rely on circular no. 5/92 dated 13.10.1992 and circular no. 312/28/97-Cx datd 22.4.1997;
- that with the advent of negative tax regime on 1.7.2012, all earlier definitions, classifications, etc. were omitted with effect from 1.7.2012; that the notice covering the period from 1.7.2012 has

been issued relying upon earlier definition of '*management or business consultant*'; that the impugned notice is still referring earlier definition to interpret the taxability of a transaction which is not legally sustainable; that they would like to rely on the case of North American Coal Corporation India P Ltd [2016(41) STR 330]; that the department itself is confused whether research activity done by the appellant are classifiable under management or business consultant or market research agency; that the notice has to be very specific and should clearly mention the relevant classification; that the adjudication order confirming the demand on the basis of defintion of service as per section 65B(44), which is not mentioned in the show cause notice is not correct and tenable; that they would like to rely on the case of Manjit Sigh [2015(323) ELT 377], Siddh Industries [2013(293) ELT 556];

- that it was incumbent on the adjudicating authority to establish a client service provider relationship between two parties; to determine whether this relationship existed between the funding agencies & the appellant, it was vital and decisive to examine the nature of the amounts paid in consideration of the assignment; that the appellant has only expended the funds as per the mutually accepted budget; that there is no scope for profit or loss; that the contracts of the appellant are based on actual expenditure of funds provided by the donor; that there is no element of profit or reward which would accrue to the appellant; that no sum whatsoever has been paid to the appellant towards reward; that there is a conspicuous absence of any service provider client relationship between the appellant and the agencies which assigned the specified job; that they would like to rely on the case of Apitco [2010]29STT 262 and HYD [2012]26 taxmann/com 213(SC)];
- **that the appellant has not been transferring the IPR to the grantee/donor of the fund; that the outcome of the research has been available on public domain for the general public usages; that no IPR has been transferred to anyone;**
- that all the contracts entered into are towards advancement of charitable purpose in India; that this fact has not been disputed in the order; that it is a settled law that the grants for specific activities are not liable for service tax; that they would like to rely on the case of Madhya Pradesh Consultancy organization Limited [2017(83) taxmann.com 154]; that reimbursement /grants cannot be taxed if the donor is not the beneficiary of the services; that they would like to rely on the case of Mineral Exploration Corporation Limited [2015(60) taxmann.com 227];
- that to treat grants as a consideration there should be a nexus between service recipient/beneficiary and donor; that they would like to rely on the case of Public Health Foundation of India [2015(59) taxmann.com 260];
- that the donors have given grants in aid to cover expenses to be incurred on a particular research; that the appellant is not providing any service to the donors in lieu of the consideration; the donors are concerned only with respect to proper utilization and accounting of fund given to them; that no service tax was payable on such grants in aid;
- the appellant has been working on behalf of various donors providing specific services/activities as legal obligatins where the benefit accrues to public at large therefore the question of any taxable service does not arise;
- that foreign grants have been arbitrarily treated as commercial services which could not have been taxed as the place of provision would be outside the country;
- that as per default rule 3, the place of provision of a service shall be the location of the recipient of service; that in case of some specified projects, the location of the recipient is outside India and accordingly, place of provision of service is outside India;
- that since there is no suppression or willful misstatement, the question of imposing penalty does not arise; that no reason whatsoever for imposing the penalty under section 78 has been given by the adjudicating authority;
- that since the issue involves interpretation of statutory provisions, penalty cannot be imposed.

5. Personal hearing in the matter was held on 26.6.2018 & 24.7.2018 wherein Dr. Manoj Fogla, Cdr. Manoj Bhatt, CAO, CA Anjani Sharma, CA Navinchandra Patel, CMFA and CA Kalapi Shah appeared on behalf of the appellant and reiterated the grounds of appeal. They further requested for two days time to make additional submission. Thereafter, vide letter dated IIMA/Fin/ST/Research/Appeal/3 dated 26.7.2018, additional submissions were made. The main submissions was that extended period cannot be invoked since they were audited earlier by the department and the department was aware that the appellant was carrying out research activities regularly, thereby reiterating what was already mentioned in their grounds of appeal.

6. The issue primarily to be decided by me is whether the appellant is liable to pay service tax or otherwise on the amounts/grants received towards rendering of services of research project to various organization.

7. The genesis of the dispute is that CERA, while conducting the audit of the appellant issued an LAR dated 17.10.2014, [a copy of which is submitted with the appeal papers], *inter alia* stating that in terms of Section 65B(44) of the Finance Act, 1994, *wef* 1.7.2012, any activity carried out by a person for another for a consideration was a service; that service included declared service also; that the appellant was undertaking research projects on behalf of other organizations for which they recovered fees towards various charges, separately. The appellant was required to submit a report on the result/outcome of the result [i.e. IPR] to their clients. The audit therefore, concluded that the appellant was liable to pay service tax on the said amount since the services rendered by the appellant were other than those mentioned in the negative list.

8. With the advent of the 'negative tax' regime, it is obvious that in terms of service as defined under section 65B(44) of the Finance Act, 1994, all the activity carried out by a person for another for a consideration was a service provided it did not find a mention in the negative list [section 66D] nor was it exmpted vide exemption notification. I find that two show cause notices were issued to the appellant by the department, viz. dated 21.1.2016 covering the period from 2012-13 and 2013-14 and show cause notice dated 5.4.2016, in respect of the period 2014-15. The appellant, in his defence has contended that the notice has demanded service tax by relying upon the definition of 'management or business consultant' service which was not tenable since all the definition, classification, etc. were omitted *wef* 1.7.2012. The defence, I find is not tenable since rather than going into technicalities, for a reputed institute like the IIM, it would have been better if the merit of the matter was examined and settled once and for all. The oversight if at all in seeking to classify the service under 'management or business consultant' service in the show cause notice, would not render the notice infructuous, more so since the larger point in the notice was that it was liable to service tax the activity being a service. This argument of the appellant lacks merit, since the appellant was provided a copy of LAR drawn by CERA which had clearly provided that the activity was covered under the definition of **service**. First of all let me state that the notice dated 21.1.2016, is clear. It only goes to specifically state that the service falls under the category of Management of business consultant service. Now it is common knowledge that with the advent of negative list regime, classification under a particular service is not of relevance. What is to be verified is whether the activity performed falls within the ambit of service as defined in the Act and that it does not fall within the negative list. The notice nowhere states that it does not fall within the ambit of service. It is only quoting a very specific definition of the service rendered. Management or business consultant service, needless to state, is a subset of the larger term **service.** Even otherwise, if an exemption is granted to a particular service, one needs to see whether the service rendered falls within the definition of a **service** even in this regime and for this one needs to refer to the definition. Further, even the reliance on the case law, by the appellant, as mentioned below would not help their case.

North American Coal Corporation India P Ltd [2016(41) STR 330]

Service - Meaning thereof, under amended provisions - Salary paid by an Indian company for utilising services of a consultant sent by parent company abroad - Taxability - During stay in India of said consultant, he is being treated as an employee of Indian company while his social security interests continued to be taken care of by foreign company - Prior to negative regime of Service Tax, there being a specific entry of manpower supply, Indian company rightly discharging Service Tax under Section 65(68) read with Section 65(105)(k) of Finance Act, 1994 - However, after advent of negative list, all earlier definitions becoming irrelevant - In terms of Section 65B(44)(b) ibid, service provided by an employee to employer, not covered under definition of services - Since said consultant not getting any salary from foreign entity during his stay in India, salary given by Indian company and benefit granted by foreign entity are mutually exclusive - Further benefits granted by foreign entity are not reimbursable by Indian company - RBI circular relied by Revenue not applicable, same having no relevance for interpretation of a service - Applicant not liable to pay any Service Tax on salary paid in terms of employment agreement - Sections 65B(44)(b) and 66B of Finance Act, 1994. [paras 4, 5, 6, 7, 8]

On going through the head notes it is evident that the reliance is misplaced. The dispute at hand, is totally different. Further, the appellant has also relied upon two more case laws, viz.

[a]Manjit Sigh [2015(323) ELT 377]

Order - Adjudication order beyond scope of show cause notice - Adjudicating authority cannot go beyond allegations leveled in show cause notice - In instant case, SCN issued for clubbing of values of software and hardware dropped by Commissioner on merits - Undervaluation of Hardware on account of inflation of value of software, not having been alleged specifically in show cause notice, confirmation of demand on such account, not sustainable - Even on merits, order unsustainable having been issued on appreciation of erroneous facts - Section 28 of Customs Act, 1962. [paras 6.1, 7]

[b]Siddh Industries [2013(293) ELT 556]:

Demand - Clandestine removal of goods - Evidence - No independent corroborative and tangible evidence produced by recording statements of transporter or purchasers, even though their names and addresses furnished by manufacturer - Statements by proprietors and employees initially admitting illegal manufacture and clearance of goods subsequently retracted in affidavits submitted as having made under pressure and coercion by officials - Confirmation of demand of duty beyond allegation in show cause notice deduced by multiplying by twelve quantity of seized goods from manufacturer's and purchaser's premises assuming such quantity as one month's production - Impugned order passed on presumption and assumption unsustainable - Sections 11A and 11AC of Central Excise Act, 1944 - Rule 25 of Central Excise Rules, 2002. [paras 9, 10, 11]

On going through the relevant head notes of these cases, it is not understood as to how this case law is relevant to the present dispute. The adjudicating authority in the present proceedings has only tried to examine whether the service rendered would fall within the ambit of service. On her examination she concluded that it falls within the ambit of service and is leviable to tax. Now how this has gone beyond the scope of the show cause notice is difficult to understand.

8.1 In view of the foregoing reasons, I do not find any merit in the contention raised that the notice is not legally sustainable. The contentions raised therefore, stand rejected.

9. Now moving on to the merits of the matter, I find that the appellant has stated that the adjudicating authority failed to establish a *client service provider relationship* between two parties; that there is no element of profit or reward which would accrue to the appellant; that no sum whatsoever has been paid to the appellant towards reward; that there is a conspicuous absence of any service provider client relationship between the appellant and the agencies which assigned the specified job; that the appellant has not been transferring the IPR to the grantee/donor of the fund; that the outcome of the research has been available on public domain;

for the general public usages; that no IPR has been transferred to anyone; that all the contracts entered into are towards advancement of charitable purpose in India; that the donors have given grants in aid to cover expenses to be incurred on a particular research; that the appellant is not providing any service to the donors in lieu of the consideration. The appellant as is evident and as is mentioned in para *supra*, raised various contentions. Now 'service' as defined under section 65B(44) states as follows [relevant extract only]:

> *(44) "service" means any activity carried out by a person for another for consideration, and includes a declared service, but shall not include—*
>
> *(a) an activity which constitutes merely,—*
> *(i) a transfer of title in goods or immovable property, by way of sale, gift or in any other manner; or*
> *(ii) such transfer, delivery or supply of any goods which is deemed to be a sale within the meaning of clause (29A) of Article 366 of the Constitution, or*
> *(iii) a transaction in money or actionable claim;*
> *(b) a provision of service by an employee to the employer in the course of or in relation to his employment;*
> *(c) fees taken in any Court or tribunal established under any law for the time being in force.*

10. Thus as per the Finance Act, 1994, Section 66B, clearly stated that there shall be levied a tax at the prescribed rate on the value of all **services** other than those services specified in the negative list, provided or agreed to be provided in the taxable territory by one person to another. Now the adjudicating authority has clearly held the activity rendered by the appellant falls within the ambit of 'service' as defined supra. However, the appellant, while contending the above, has failed to explain as to how the service rendered by him would not get covered by the ambit of service, as mentioned supra. **There is absolute silence in this regard. Nothing is brought before me to prove that**

[a] the activity rendered by the appellant, is either exempted;
[b]the activity rendered by the appellant falls within the exclusion category of the definition of service; or
[c] the activity rendered, falls within the negative list, i.e. section 66D of the Finance Act, 1994.

Till this is proved by the appellant, it is not understood as to how they are not liable to service tax. The appellant I find has more than once asserted that they are not transferring IPR to the grantee/donor of the fund. The adjudicating authority has examined and ruled otherwise. However, since the appellant has given copies of certain agreement, I also had the chance of examining the same. I would briefly mention, my observations on going through the agreements/contracts, one after the another:

[a] Abbott Healthcare Private Limited

Date of agreement	15.12.2014.
Scope	Abott being desirous of understanding the hospital care models beter wishes to conduct an exclusive corporate hospital CEO conclave – a platform for hospital CEOs to interact with thought leaders in health care and marketing strategy on global best practices and understand the evolving patient service quality challenges and strategies in the Indian context; that they will together organize IIMA-Abbott conclave for hospital CEOS in April 2015 in Mumbai.
Fees	50% in advance, 30% after conclusion of the conclave 20% on receipt of final draft of 2nd communiqué by November 2015
IPR	The IPRs in the white papers created by IIMA as set out in the Annexure are owned jointly by Abbott and IIMA. Any materials or data or intellectual property vesting in such materials or data provided by Abott shall remain the sole property of Abbott and shall not constitute a licence

	thereto or transfer thereof to IIMA.

[b] British Council

Date of agreement	Project period is January to December 2012
Scope	University industry linkages in UK and India exploring models of enterprise creation.
Fees	£26000
IPR	The recipient however grants British Council an irrevocable royalty free, non exclusive world wide right and lice to use any information, data reports documents or other materials obtained. On going through the papers attached in respect of this agreement, nothing is forthcoming in this front.

[c] Indo US science and technology forum

Date of agreement	11.9.2012
Scope	Governments of India and the United States of America have agreed to establish a Indo US joint clean energy research and development centre whose aim is to facilitate joint research and development on clean energy & related activities
Fees	The contribution of GOI is Rs. 2812 lacs as grants in aid and amount put forth by the consortium is Rs. 8948 lakhs.
IPR	Is as per Annexure 3 and 4 which is not attached with the agreement.

[d] MOU with Ecole Polytechnic

Date of agreement	4.7.2007, the activity is meant to be pursued for five years initially under the MoU.
Scope	IIMA students would join French students for industry projects as part of multi national project teams for their summer internships and a joint international symposium./congress at IIMA on multi cultural management towards the end of the five years.
Fees	In 2008 Euro 15000 was transferred and two students did internships for Renault India.
IPR	The agreement is silent on the aspect of IPR

[e] Techno economic assessment of CO_2 capture and storage potential in India : A Policy prespective

Date of agreement	5.8.2013
Scope	Only the sanction order of the Department of Science and Technology under the Minstry of Science and Technology, GOI is provided with the appeal papers and therefore, the details not known.
Fees	Sum of Rs. 13.39 & 15.10 lacs has been sanctioned by the President.
IPR	The sanction order is silent on this fact.

[f] Assessment of Impact of climate change on water energy nexus in Agriculture under canal irrigation system under the National Agricultural Innovation Project(NAIP)

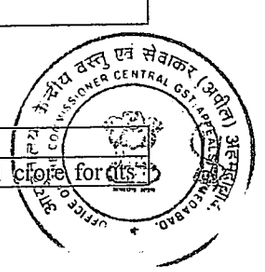
Date of agreement	31.12.2008.[period of the project: 3 years and 3 months from January 2009]
Scope	Scope of work is as per PIP i.e. project implementation plan, the copy of which is not attached.
Fees	Total cost of the project is Rs. 318.120 lacs
IPR	The document provided is silent on this aspect.

[g] Implementation of wage indicator concept in India

Date of agreement	2.2.2005 during a period of three years.
Scope	Implementation of wage indicator concept in India; to apply online master questionnaire to adapt it to their national labour market and to help develop a national salary check based on the national dataset in close consultation with AIAS and the management of the wage indicator foundation.
Fees	As per the payment scheme attached.
IPR	Income from license and banner on the website go to ITPF. Revenue generated by paid research on the national dataset during the contract period benefits IIM and other partners.

[h] Mou with Sri Aurobindo Society

Date of agreement	1.11.2012
Scope	IIMA has been selected as an awardee and receipient of a grant of Rs. 1 crore for its



	project; that IIMA has indicated its willingness to accept the award and fulfill the terms condition and understanding contained herein and the parties have agreed to enter into this MOU to record the basic understanding between them on the grant of the said award; the details of the project are as per Annexure I copy of which is not attached.
Fees	Payment are subject to positive assessments at every stage; funding will be as per schedule, which is not attached.
IPR	The parties shall exercise utmost care to preserve the confidentiality of all information disclosed by the others; that they shall not use the said information for any purpose other than that contemplated herein, without the prior approval of the other parties.

[i] Proposal for a case on BCCL's experience of turnaround and roadmap towards sustainability

Date of agreement	20.5.2013
Scope	To write a case on the turning around of business as wsell as creating susbtainabilty. The methodology used would comprise of use of published information, reports, company publications, industry reports and interview of top management and key managers.
Fees	Rs. 5.00 lacs
IPR	The case depending on the information provided could be used at IIMA, other top management institute, for publishing in journals, international books and for training at the company.

[j] Study of energy balance of rual India using geospatial inputs

Date of agreement	Study duration April 2013 to March 2014
Scope	Quantitative estimation of energy production, consumption, import and export at village level; develop a energy flow model and assess net energy balance at village level; quantitative estimation of green house gases emission resulting from energy use in rural livelihoods.
Fees	Rs. 7.92 lacs
IPR	Not mentioned.

[k] Documenting best practices from Tata Companies

Date of agreement	Period of validity 1.10.2014 to 31.3.2015
Scope	24 best practice write ups will have to be prepared during the period and would have to be submitted by 30.4.2015.
Fees	Rs. 47500/- for each best practice.
IPR	The intellectual property rights of the technologies and processes related to best practices will be with TQM.

[l] Financial inclusion research and convening program.

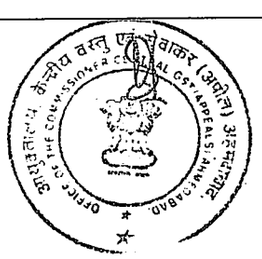
Date of agreement	23.7.2013
Scope	United Way Worldwide has awarded a grant to IIMA in support of Financial inclusion Research and Convening Programme
Fees	$2,00,000
IPR	UWW reserves a royalty free nonexclusive and irrevocable tight to reproduce publish translate or otherwise use any publication of material developed under this aard.

[m] Woman led model of sanitation service delivery in Bihar, India.

Date of agreement	29.8.2012 [period involved 1.7.2012 to 30.6.2014]
Scope	Gujarat Mahila Housing SEWA Trust and IIM on Gates foundation sub grant to study the proposal of woman led model of sanitation service delivery in Bihar.
Fees	$ 70800/-
IPR	Not mentioned.

[n] Study on remote work and global sourcing in information technology enabled services in India

Date of agreement	19.9.2007 [period involved 20.9.2007 to 21.12.2007]
Scope	ILO has asked IIM to conduct a study on remote work and global sourcing in information technology enabled services in India.
Fees	$ 11500
IPR	Copyrights resulting from the work to be performed under this contract shall be vested in the ILO including without any limitation, the rights to use, publish, sell, or distribute, privately or publicity any item or part thereof.



[o] Development of research, teaching tools and teaching programs in microfinance management

Date of agreement	9.3.2004
Scope	Microfinance Management Institute has awarded a grant to IIM to support Development of research, teaching tools and teaching programs in microfinance management.
Fees	$115000
IPR	IIM shall provide MMI with copy of publications of other IPR rsulting from th grant; IIM shall retain complete right, title and inerest including without limitation copyright; IIM grants MMI an irrevocable, worldwide fully paid up and royalty free license in perpetuity to reproduce and distribute the works in any media, etc…

[p] Implementation of same language subtitling on three weekly song based TV programmes n Kannada, telecast on Doordarshan, Chandana.

Date of agreement	21.11.2011
Scope	IIMA will be responsible for the overall management and coordination of subtitling operations; IIMA will adhere to the requirements of Same Language Subtitling
Fees	Rs. 29.06 lacs
IPR	Nothing mentioned in the papers submitted

[q] Setting up of Union Bank of India centre of excellence

Date of agreement	18.3.2009
Scope	Setting up a chair with focus on facilitating, enabling strengthening, success and growth of banks portfolio.
Fees	Rs. 2 crores
IPR	The intellectual property rights on all the work done by the Union Bank-IIMA Centre of Excellence shall remain with IIM. The bank shall have access to all the works of the Union Bank IIM Centre on cost free license basis.

My basic purpose of mentioning the brief details of the 17 agreements, copies of which have been provided, is just to examine the claim of the appellant that they were not transferring the IPR to the grantee/donor of the fund. The adjudicating authority in para 18.1, has stated that in some cases the IPR has been vested in favour of the grantee/donor. There is not much clarity since some of the agreements clearly mention that the IPR is to be transferred to the grantee/donor of the fund. But what is not understood is would this make any difference to the taxability aspect. In-fact the adjudicating authority has relied upon guidance note 2.2.7 which stated that "*In case research grant is given with counter obligation on the researcher to provide IPR rights on the outcome of research or activity undertaken with the help of such grants then the grant is a consideration for the provisions of service of research. General grants for researches will not amount to consideration*". This I find is just an education guide which lists one of many such situation which may arise. But ultimately every case has to stand on its own merit. For any exemption, the route is -issue of an exemption notification or the - Act making the activity, non taxable. Since the education guide has no legal backing even in cases where the appellant has not transferred the IPR, I hold that the service tax is payable more so since the Finance Act does not make the activity non taxable. No exemption notification is produced before me which grants exemption based on IPR. Therefore, it is held that the activity rendered by the appellant is liable to service tax, irrespective of the fact that the IPR is transferrable or otherwise.

11. The appellant has relied upon the case of Apitco Limited [2010(20) STR 475] to argue that the question of service tax on grants simply is not legal. The operative portion of the judgement is reproduced below for ease of reference:

*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 ombit 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.*

*7. For the reasons noted above, we hold that any amount of service tax is not leviable on the grants-in-aid received by the assessee from the governments, as **project-implementing agency of the governments** , during the period of dispute. The assessee has also made out a good case on the ground of limitation against a major part of the demand of duty raised in the first show-cause notice. As early as in January 2004, the assessee had furnished all the relevant facts to the department through a letter addressed to the jurisdictional Assistant Commissioner. Later on, in 2006, they stated all these facts once again in a letter addressed to the Superintendent of Service Tax. The show-cause notice in question was issued on 13-6-2006 invoking the first proviso to Section 73(1) of the Finance Act 1994 on the ground of suppression of facts. We have no hesitation to hold that this allegation of suppression of facts by the assessee is not tenable.*

8. In the result, both the appeals filed by the assessee are allowed and the Revenue's appeal is dismissed.

Facts are clearly distinguishable. The above citation will also clarify the education guide note 2.2.7 quoted supra. The case of Apitco Limited is regarding *"implementation of welfare schemes"* on behalf of Central and State governments and not about providing any research services. I would like to clarify this through an example. The "CARE" organization provides various services to under privileged section in tribal areas and their reach in these areas are better than that of Government departments. Therefore, various state as well Central Government departments have engaged CARE organization to distribute and implement various welfare schemes on behalf of respective Governments. The concerned government departments only supervises the implementation of welfare schemes by the CARE. The above citation of Apitco is relating to such activities and it has nothing to do with the *" research conducted"* rather they implement the welfare schemes on behalf of respective governments and such organizations (implementing Government Schemes) are given "grant-in-aid" for such purpose. While research is a completely different field and is also different from providing *"scientific or technical consultancy"*. However the case of Apitco and also case of Administrative Staff College [2009 (14) S.T.R. 341] of India, the Tribunal was basically concerned with "implementation of government schemes" as underlined above and therefore, not related to present case. The present

case is neither about scientific or technical consultancy nor about implementation of welfare schemes. In case of Administrative Staff College of India, the Hon Tribunal has 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....".* From the above two facts emerge (i) Apitco Limited was concerned with the implementation of Government schemes; (ii) Administrative Staff College was concerned with whether the "research activities" which was related to social science, can be called "scientific and consultancy services". Infact the case of Administrative Staff College is helpful in establishing that the services under consideration in present case is classifiable under "research services". The present dispute however, pertains to a period before the introduction of the negative tax regime, subsequent to which the service tax leviability underwent a **sea change**. Now to fall under the ambit of service tax, the activity has to fall under the ambit of the definition of service, which I have already reproduced *supra.* Exemptions are only if the activity is covered in the negative list or are exempted vide some notifications. That not being the case, the appellant's contention by relying on the said judgement is not tenable.

12. Now the last argument of the appellant that the first show cause notice dated 21.1.2016, is barred by limitation, needs to be addressed. The appellant's entire thrust was on the fact that the notice was barred by limitation. The second notice however is issued without invoking the extended period. The appellants contention is that the show cause notice in respect of LAR dated 17.10.2014, was issued on 21.1.2016, received on 1.2.2016, covering the period 2012-13 and 2013-14; that when it was known to the department it cannot claim that there was suppression of facts or misstatement; that since the present demand involves issues of interpretation, taking an interpretation which does not suit the department does not mean there is any kind of willful suppression with an intention to evade payment of service tax; that department had audited their institute and issued an audit report 86/2011-12 covering the period from 2009-2010 and 2010-11; that audit upto March 009 was completed vide FAR No. 52/2011-12; that in the FAR 86/2011-12, there were no observations and nil report was issued by the department; that relevant extracts of schedules for FY 2009-10 and 2010-11 clearly shows that the appellant had carried out research activities during the relevant period; that therefore extended period cannot be invoked. The appellant has quoted a plethora of case laws to substantiate his arguments.

13. Section 73 of the Finance Act, 1994, defines relevant date as follows:

> *(6) For the purposes of this section, "relevant date" means, —*
> *(i) in the case of taxable service in respect of which service tax has not been levied or paid or has been short-levied or short-paid —*
> *(a) where under the rules made under this Chapter, a periodical return, showing particulars of service tax paid during the period to which the said return relates, is to be filed by an assessee, the date on which such return is so filed;*
> *(b) where no periodical return as aforesaid is filed, the last date on which such return is to be filed under the said rules;*
> *(c) in any other case, the date on which the service tax is to be paid under this Chapter or the rules made thereunder;*
> *(ii) in a case where the service tax is provisionally assessed under this Chapter or the rules made thereunder, the date of adjustment of the service tax after the final assessment thereof;*

(iii) in a case where any sum, relating to service tax, has erroneously been refunded, the date of such refund.]

The appellant has not produced any document to substantiate that the department has issued the show cause notice beyond the relevant date. Now coming to his argument that in respect of LAR dated 17.10.2014 the SCN was issued on 21.1.2016, received on 1.2.2016, covering the period 2012-13 and 2013-14, the appellant is under a misconception that this is beyond extended period. I find that the notice has been issued within the relevant date by invoking extended period. Now, moving on to the argument that no extended period, is invocable, I find that the only ground with the appellant is that since it was known to the department extended period could not have been invoked. The argument is not tenable because the income and expenditure account for the year 2010-11 and 2009-10, for which the appellant says the internal audit gave a nil report, shows the grant income under schedule 10 as NIL, for both the financial years. The appellant himself claims that these were grants in aid. Now when no income was shown under this head, the internal audit could never have unearthed the fact that service tax was not being paid. Even other wise, the show cause notice was issued for the period 2012-13 onwards. I do not find any merit in the claim and therefore reject the contention. I have gone through the plethora of case laws quoted by the appellant. After having applied my mind, I am of the view that none of the case law fits the facts of the current dispute. Therefore, not being relevant I am not discussing the same. Since the extended period is upheld, the penalty imposed also stands upheld.

14. The OIA being lengthy, I would like to summarize my findings, viz.

[a] that the notice does not stand vitiated simply because it proposes to classify the service rendered under Management or business consultant service;
[b] that the appellant is liable for service tax and the confirmation of the tax along with interest and penalty by the adjudicating authority is upheld;
[c]the notice dated 21.1.2016 is not barred by limitation.

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

15. The appeal filed by the appellant stands disposed of in above terms.

(उमा शंकर)
आयुक्त (अपील्स)

Date .08.2018.

Attested

(Vinod Lukose)
Superintendent (Appeal)
Central Tax, Ahmedabad.

BY R.P.A.D

M/s. Indian Institute of Management Ahmedabad,
Dr. Vikram Sarabhai Marg,
Near Andhajan Mahamandal,
Vastrapur,
Ahmedabad 380 015

Copy to:-

1. The Chief Commissioner, Central Tax Zone, Ahmedabad.
2. The Commissioner, Central Tax, Ahmedabad South Commissionerate.
3. The Addl./Joint Commissioner, (Systems), Central Tax, Ahmedabad South Commissionerate.
4. The Dy. / Asstt. Commissioner, Central Tax, Div VI, Ahmedabad South Commissionerate.
5. Guard file.
6. P.A