



सत्यमेव जयते

केंद्रीय कर आयुक्त (अपील)

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

केंद्रीय कर भवन,

सातवीं मंजिल, पोलिटेकनिक के पास,
आम्बावाडी, अहमदाबाद-380015

7th Floor, GST Building,
Near Polytechnic,

Ambavadi, Ahmedabad-380015

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रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या : File No : V2(ST)44/Ahd-South/2018-19
Stay Appl.No. /2018-19

ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-EXCUS-001-APP-046-2018-19
दिनांक Date : 31-08-2018 जारी करने की तारीख Date of Issue 11/19/2018

श्री उमा शंकर आयुक्त (अपील) द्वारा पारित

Passed by Shri. Uma Shanker, Commissioner (Appeals)

ग Arising out of Order-in-Original No. CGST/Div-VI/07/IIM/17-18 दिनांक: 29.03.2018 issued by
Assistant Commissioner, Div-VI Central Tax, Ahmedabad-South

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

कोई व्यक्ति इस अपील आदेश से असंतोष अनुभव करता है तो वह इस आदेश के प्रति यथास्थिति नीचे बताए गए सक्षम अधिकारी को अपील या पुनरीक्षण आवेदन प्रस्तुत कर सकता है।

Any person aggrieved by this Order-In-Appeal may file an appeal or revision application, as the one may be against such order, to the appropriate authority in the following way :

भारत सरकार का पुनरीक्षण आवेदन
Revision application to Government of India :

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1994 की धारा अतत नीचे बताए गए मामलों के बारे में पूर्वोक्त धारा को उप-धारा के प्रथम परन्तुक के अंतर्गत पुनरीक्षण आवेदन अधीन सचिव, भारत सरकार, वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, संसद मार्ग, नई दिल्ली : 110001 को की जानी चाहिए।

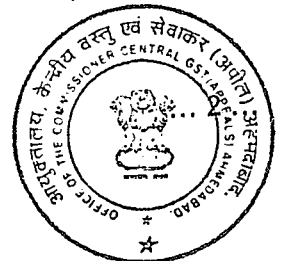
(i) A revision application lies to the Under Secretary, to the Govt. of India, Revision Application Unit Ministry of Finance, Department of Revenue, 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi - 110 001 under Section 35EE of the CEA 1944 in respect of the following case, governed by first proviso to sub-section (1) of Section-35 ibid :

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

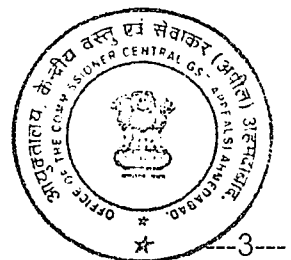
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील:-
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(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 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. Registrar of a branch of any nominate public sector bank of the place where the bench of any nominate public sector bank of the place where the bench of the Tribunal is situated.

- (3) यदि इस आदेश में कई मूल आदेशों का समावेश होता है तो प्रत्येक मूल आदेश के लिए फीस का भुगतान उपर्युक्त ढंग से किया जाना चाहिए इस तथ्य के होते हुए भी कि लिखा पढी कार्य से बचने के लिए यथास्थिति अपीलीय न्यायाधिकरण को एक अपील या केन्द्रीय सरकार को एक आवेदन किया जाता है।

In case of the order covers a number of order-in-Original, fee for each O.I.O. should be paid in the aforesaid manner notwithstanding the fact that the one appeal to the Appellant Tribunal or the one application to the Central Govt. As the case may be, is filled to avoid scriptoria work if excising Rs. 1 lacs fee of Rs.100/- for each.

- (4) न्यायालय शुल्क अधिनियम 1970 यथा संशोधित की अनुसूची-1 के अंतर्गत निर्धारित किए अनुसार उक्त आवेदन या मूल आदेश यथास्थिति निर्णयन प्राधिकारी के आदेश में से प्रत्येक की एक प्रति पर रु.6.50 पैसे का न्यायालय शुल्क टिकट लगा होना चाहिए।

One copy of application or O.I.O. as the case may be, and the order of the adjournment authority shall a court fee stamp of Rs.6.50 paise as prescribed under scheduled-I item of the court fee Act, 1975 as amended.

- (5) इन ओर संबंधित मामलों को नियंत्रण करने वाले नियमों की ओर भी ध्यान आकर्षित किया जाता है जो सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्याविधि) नियम, 1982 में निहित है।

Attention is invited to the rules covering these and other related matter contended in the Customs, Excise & Service Tax Appellate Tribunal (Procedure) Rules, 1982.

- (6) सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट), के प्रति अपील के मामले में कर्तव्य मांग (Demand) एवं दंड (Penalty) का 10% पूर्व जमा करना अनिवार्य है। हालांकि, अधिकतम पूर्व जमा 10 करोड़ रुपए है। (Section 35 F of the Central Excise Act, 1944, Section 83 & Section 86 of the Finance Act, 1994)

केन्द्रीय उत्पाद शुल्क और सेवा कर के अंतर्गत, शामिल होगा "कर्तव्य की मांग"(Duty Demanded) -

- (i) (Section) खंड 11D के तहत निर्धारित राशि;
- (ii) लिया गलत सेनवैट क्रेडिट की राशि;
- (iii) सेनवैट क्रेडिट नियमों के नियम 6 के तहत देय राशि.

⇒ यह पूर्व जमा 'लंबित अपील' में पहले पूर्व जमा की तुलना में, अपील दाखिल करने के लिए पूर्व शर्त बना दिया गया है।

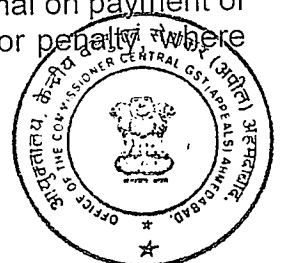
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (Section 35 C (2A) and 35 F of the Central Excise Act, 1944, Section 83 & Section 86 of the Finance Act, 1994)

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

- (i) amount determined under Section 11 D;
- (ii) amount of erroneous Cenvat Credit taken;
- (iii) amount payable under Rule 6 of the Cenvat Credit Rules.

इस 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

M/s. Indian Institute of Management, Dr. Vikram Sarabhai Marg, Near Andhajan Mahamandal Vastrapur, Ahmedabad-380015 (hereinafter referred to as 'appellants') have filed the present appeal against the Order-in-Original number CGST/Div-VI/07/IIM/17-18 dated 29.03.2018 (hereinafter referred to as 'impugned order') passed by the Asstt. Commissioner, CGST, Div-VI, Ahmedabad (South) (hereinafter referred to as 'adjudicating authority').

2. The facts of the case, in brief, are that the appellants were engaged in business of providing management consultancy services, commercial training and coaching, manpower recruitment services, health club & fitness services, renting of immovable property and accommodation services for which they are holding Service Tax registration. During the test check of audit, it was found that in order to increase the connectivity between alumni of the IIMs, the appellants were having an Alumni association in which the alumni were made members on payment of subscription fees. For this purpose, the appellants were having a website and the alumni, so connected used to bring fund to the appellants, provide career support, facilitate alumni for network with peers and to create an infrastructure which would allow recruiters to interact with alumni, who permit them to do so. As the members were generally connected through website, it was exempted prior to 01.07.2012 by virtue of its exclusion from the definition of club or association but with introduction of negative list of approach with effect from 01.07.2012, it became taxable. The appellants had not discharged service tax liability on this service for the period from 2009-10 to 2013-14 amounting to Rs. 12,49,230/-. A show cause notice dtd. 22.03.2017 was issued proposing confirmation recovery of service tax of Rs. 12,49,230/- with interest for the services which fall under category of "Club or Association Service and imposition of penalties under various sections of the Finance Act, 1994 (herein after "the Act"). The adjudicating authority, vide the impugned order, confirmed demand of service tax of Rs. 12,49,230/- with interest and also imposed penalty of Rs. 10,000/- u/s 77(2) for not disclosing correct amount in ST-3 return and penalty of Rs. 12,49,230/- u/s 78(1) for suppression of facts.

3. Being aggrieved with the impugned order, the appellants have preferred this appeal wherein it is argued by the appellants:

- a) That they a society registered under the Societies Registration Act, 1860 and are engaged in the activities of providing management consultancy services, commercial training and coaching and such other



services for interaction between the alumina, a website has been maintained and they collect subscription;

- b) That for being chargeable to tax, it is essential that the person concerned should render service to another person and there should be a service provider and a service receiver. The students' association does not have any independent existence or identity of its own and there is no other party rendering any service to the students. They rely on the case law of 2013 (31) STR-445 (Tri. Ahmed.) and Sikkim Manipal University vs. Commissioner of Customs, Central Excise & Service Tax, Siliguri - 2017 (3) G.S.T.L. 266 (Tri. - Kolkata) and that without providing any service, there is no question of service tax as the service tax is applicable only when there is service provided in lieu of consideration;
- c) They rely on the case law of 2013 (29) STR-9 (Del.) in which it has been held that no service tax is applicable on such collection of charges on reimbursement basis;
- d) That the demand is time barred provisions of section 78 of the Act are absolute and no penalty is called for and since there is no suppression of facts with intention to evade payment of service tax, provisions of section 78 of the Act cannot be invoked. They rely on the case law of Steel Cast Ltd. - 2011 (21) STR-500 (Guj.). The issue involves interpretation of statutory provisions and for that reason also, penalty cannot be imposed. They rely on the case laws of Bharat Wagon & Engg. Co. Ltd. vs. Commissioner of Central Excise, Patna - (146) ELT-118 (Tri. - Kolkata), Goenka Woolen Mills Ltd. vs. Commissioner of Central Excise, Shillong - 2001 (135) ELT-873 (Tri. - Kolkata) and Bhilwara Spinners Ltd. vs. Commissioner of Central Excise, Jaipur - 2001 (129) ELT-458 (Tri. - Del.).

4. Personal hearing in the case was granted on 28.08.2018 in which Shri Vipul Khandhar and Ms. Kalapi Shah, both Chartered Accountants appeared before me and reiterated the grounds of appeal. The appellants also submitted additional submission i.e. a copy of case law of Sikkim Manipal University vs. Commissioner of Customs, Central Excise & Service Tax, Siliguri - 2017 (3) G.S.T.L. 266 (Tri. - Kolkata).

5. I have carefully gone through the facts of the case on records, grounds of appeal in the Appeal Memorandum and oral submissions made by the appellants at the time of personal hearing.

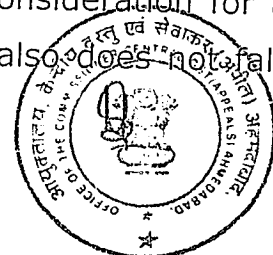


6. Short question to be decided is whether the service tax has been demanded correctly from the appellants on subscriptions received from alumna for maintaining a website used for interaction among them.

7. On perusal of the impugned order, I find that the adjudicating authority has discussed the provisions of Sub-Section (44) of Section 65B of the Finance Act, 1994 which has defined service as any activity carried out by a person for another for consideration and includes a declared service but excludes some services detailed therein. I find that to be a taxable service, there has to be a service provider and a service recipient and that service should be provided for a consideration. In the instant case, there are alumni who have formed an association and they interact through a website and keep in contact with one another. There are certain results also of this interactions such as opportunity of jobs and guidance etc. it is also a fact that they pay a subscription fee and on this subscription, the demand of service tax has been confirmed. In such a scenario, the main condition of a service provider and a service recipient is not fulfilled as there is no service being provided here and it is just a medium of interaction between other people. Furthermore, there is no specific consideration for any particular service and therefore it is not right to hold that the liability of service tax payment arises. I further find support from the case law of SIKKIM MANIPAL UNIVERSITY Vs. COMMISSIONER OF CUSTOMS, C. EX. & S.T., SILIGURI cited at 2017 (3) G.S.T.L. 266 (Tri. - Kolkata) upon which the appellants have relied and in which it has been held that service tax liability does not arise where there is an association of alumni. I quote the relevant para as under:

"4. After hearing both sides and perusal of record, it appears that the alumni association is a group of people who have graduated from the same institution. In future, they want to maintain emotional bonds among themselves and with the institution through this association. Hence, it is desired by every graduate to be associated with the past educational institution, who made a valuable contribution to their growth as well as academic achievement. No association can survive without money. Hence, some money is required that can be expected in the form of fee/contribution taken from the students. In the instant case, the institution has collected some money in the name of alumni fee but without providing any service. When no Service is provided then applicability of the Service Tax is not in question. Needless to mention that Service Tax is applicable where any service is provided in lieu of consideration, but in the instant case no service is provided. When no service is provided then applicability of Service Tax is not in question."

In the present case also, as discussed above, I find that there is no service being provided by the appellants and it is an interaction among alumni and sometimes prospective job providers and there is no consideration for any specific activity. I therefore find that the present case also does not fall in



the category of services liable for service tax and accordingly the impugned order cannot be upheld. I therefore allow the appeal and the impugned order is set aside.

8. The appeal filed by the appellant stand disposed off in above terms.

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

उमाशंकर


(उमा शंकर)

केंद्रीय कर आयुक्त (अपील्स)

अहमदाबाद

दिनांक:

सत्यापित


(धर्मेंद्र उपाध्याय)
अधीक्षक (अपील्स),
केंद्रीय कर, अहमदाबाद

By R.P.A.D.

To:

M/s. Indian Institute of Management,
Dr. Vikram Sarabhai Marg,
Near Andhajan Mahamandal,
Vastrapur,
Ahmedabad-380015

Copy to:-

- (1) The Chief Commissioner, CGST, Ahmedabad Zone,
- (2) The Commissioner, CGST, Ahmedabad (North),
- (3) The Dy./Asth. Commissioner, CGST, Div.-VI, Ahmedabad (South),
- (4) The Dy./Asth. Commissioner(Systems),CGST, Ahmedabad (South),
- ✓ (5) Guard File,
- (6) P.A.File.

