



सत्यमेव जयते

## केंद्रीय कर आयुक्त (अपील)

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

केंद्रीय कर भवन,

7<sup>th</sup> Floor, GST Building,

Near Polytechnic,

सातवीं मंजिल, पोलिटेकनिक के पास,

Ambavadi, Ahmedabad-380015

आम्बावाडी, अहमदाबाद-380015

☎: 079-26305065

टेलिफैक्स : 079 - 26305136



रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या : File No : V2(ST)140&29/Ahd-South/2018-19 ,V2(ST)108/Ahd-South/2017-18

10758 to 10762

ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-EXCUS-001-APP-10 to12-2019-20

दिनांक Date : 22-05-2019 जारी करने की तारीख Date of Issue \_\_\_\_\_ 29/05/2019

श्री उमा शंकर आयुक्त (अपील) द्वारा पारित

Passed by Shri. Uma Shanker, Pr.Commissioner (Appeals)

ग Arising out of Order-in-Original No. CGST-VI/REF-82/SKC/IIM/18-19 दिनांक: 27.09.2018, CGST-VI/REF-09/IIM/18-19 दिनांक: 09.05.2018, CGST-VI/REF-07/IIM/17-18 दिनांक: 24.08.2017 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 यथार्थिती 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, 4<sup>th</sup> 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 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 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 Appellate Tribunal or the one application to the Central Govt. As the case may be, is filled to avoid scriptoria work if excising Rs. 1 lacs fee of Rs.100/- for each.

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

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

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

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

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

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

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

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

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

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

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

इस इस आदेश के प्रति अपील प्राधिकरण के समक्ष जहाँ शुल्क अथवा शुल्क या दण्ड विवादित हो तो माँग किए गए शुल्क के 10% भुगतान पर और जहाँ केवल दण्ड विवादित हो तब दण्ड के 10% भुगतान पर की जा सकती है।

In view of above, an appeal against this order shall lie before the Tribunal on payment of 10% of the duty demanded where duty or duty and penalty are in dispute or penalty where penalty alone is in dispute."



**ORDER-IN-APPEAL**

This order arises on account of three appeals filed by M/s Indian Institute of Management, Vastrapur, Ahmedabad-380015 (in short 'appellant') against the following Order-in Original Nos. (in short 'impugned orders') passed by the Assistant Commissioner, CGST, Division- VI, Ahmedabad South (in short adjudicating authority):

Sr. No.	Impugned OIO No and date	Amount of Refund	Period	Appeal No.
1.	CGST-VI/Ref.-07/IIIM/17-18 dated 24.08.2017	Rs. 3,04,42,750/-	April 2016 to September-2016	V2(ST)108/Ahd-I/2017-18
2.	CGST-VI/Ref.-09/IIIM/18-19 dated 09.05.2018	Rs. 4,23,16,615/-	October 2016 to March-2017	V2(ST)29/Ahd-South/18-19
3.	CGST-VI/Ref.-82/SKC//IIIM/18-19 dated 27.09.2018	Rs. 8,28,345/-	April- 2017 to June-2017	V2(ST)140/Ahd-South/18-19

2. Briefly stated, refund claims were filed by the appellant before the adjudicating authority seeking refund of service tax paid *under protest* in respect of service tax paid towards PGPX course, under the Commercial and Training & Coaching service. The appellant claimed that since the said course was not covered under taxable service, they had paid the service tax under protest. The above said refund claims were filed on the basis of the order passed by the Hon'ble High Court of Kerala in case of Kasaragod District Parallel College Association reported in 2014(34)STR 324 (Ker.)

3. Consequent to receipt of the refund claims, show cause notices were issued to the appellant asking him to show cause as to why the refund should not be rejected on the grounds that the refund application was premature. The adjudicating authority vide his impugned orders, rejected the refund claims on the grounds that they were premature and that the appellant had paid service tax under protest on their own: that the appellant had not submitted copy of any letter informing payment of service tax under protest; that if they were certain that no service tax is leviable then why did they pay service tax; that in cases where service tax is paid under protest there is proper procedure of a notice being issued, the said notice being adjudicated and thereafter the appellant filling the refund application; that this procedure was not followed.

4. Feeling aggrieved, by the impugned OIOs, the appellant has filed **the present appeals and requested to set aside** the impugned order and allow the refund claims.



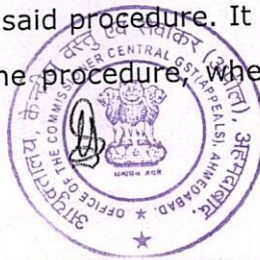
5. Personal hearing in the matter was held 02.05.2019. Shri Vipul Khandhar, CA, and Kalapi Shah, CA represented the appellant and reiterated the grounds of appeal and explained the case in detail. They also submitted additional submissions dated 3.5.2018 and 25.4.2019.

6. I have gone through the facts of the case, the grounds of appeal, the additional submission and the oral averments raised by the appellant during the course of personal hearing. I find that there is delay of 10 days in filing appeal in respect of appeal no. V2(ST)108/Ahd-I/2017-18 shown at Sr. No. 1 of the above table. The appellant has filed an application for the condonation of delay and in terms of proviso to Section 85 of the Finance Act, 1994, I condone the delay. I find that the primary and only issue to be decided by me in this appeal is whether the rejection of refund on the grounds of it being premature, is correct or otherwise.

6.1 I find that the adjudicating authority while rejecting the refund, held that the appellant has not disclosed on whose direction they paid the said service tax under protest; that they had not submitted any letter informing payment of service tax under protest by them; that if they were certain that no tax is payable, why did they pay service tax; that they had failed to follow the proper procedure before filing of the refund claim; that their claim is premature; that there was no need to pay service tax under protest by the appellant; that the appellant could have shown the said course under exempted service after informing the department; that show cause notice will be issued by the department before the due date wherein it will also be proposed that the amount of service tax paid by the claimant under protest should not be appropriated towards their service tax liability and thereby vacating claimant's protest; that if the adjudicating authority drops proceeding against the appellant, then they can file refund as a consequential relief.

7. The appellant has produced copies of the letters addressed to the then Superintendent of Range-II, Division II, Service Tax Commissionerate, wherein he has informed the department of his intention to pay the service tax under protest. The contention of the adjudicating authority therefore, is not correct.

9. The findings of the adjudicating authority which I have reproduced *supra*, are not tenable. The finding are at best without any legal basis. Is there any bar on the appellant which prohibits him to pay service tax under protest. The adjudicating authority has failed to substantiate his findings. Further, the adjudicating authority while spelling out the departmental procedure to be adopted in cases where tax is paid under protest, further goes on to hold that the appellant filed the refund by avoiding the said procedure. It is not understood as to how the appellant could have avoided the procedure, when it was the department which



was supposed to initiate the proceedings. The appellant already informed the department of his intention to pay service tax under protest and thereafter filed refund claims. In hindsight, I find that the department had ample time to initiate the proceedings/procedure, which the adjudicating authority has held, that the appellant avoided. The adjudicating authority while rejecting the refund further holds that there is no procedure of refund of amount paid under protest without following the said procedure ignoring the fact that it was the department which had to initiate the proceedings/procedure. Needless to state, that the appellant cannot be expected to wait till the department initiate the proceedings/procedure and to thereafter file the refund, when there was every chance of the refund application, being held as time barred by the department.

10. The appellant has further submitted a copy of order No. A/10622-10623/2019 dated 01.04.2019 passed by the Hon'ble CESTAT, Ahmedabad in their own case. The issue in this case before the Hon'ble Tribunal was that IIM Ahmedabad[IIMA], which was providing various long duration courses like Post Graduate Programmes (PGP), PGP-X, fellowship programmes and small duration courses [MDPs], during the period of 2009-10 to 2013-14, was not making any payment of service tax under 'commercial training or coaching service'. IIMA started making payment of service tax on small duration course i.e. MDPs only. It continued to avail exemption under Notification No. 33/2011-ST dated 25.4.2014 till 30.06.2012 and w.e.f. 01.07.2012 under Section 66D of the Finance Act, 1994, on long duration courses on the ground that such courses resulted in educational qualification recognized by law for the time being in force. The department however objected on the grounds that the certificates/ diplomas/degrees awarded by IIMA were not recognized by AICTE and hence educational qualification cannot be termed as '**recognized by the law**' for the time being in force' and hence they were not eligible for the exemption. The Tribunal while deciding the issue in favour of IIMA, in para 7 held as follows:

*"7. In the view of the above it is apparent that recognition by law does not mean recognition by AICTE etc., but it means recognition by government in any significant manners. In the instant case, the course under dispute has been recognized by government as equivalent to other degree/diploma courses for the purpose of employment and higher education. Moreover, Ministry of HRD has clearly laid down in their letter dated 31.01.2017 that recognition by AICTE or NBA accreditation is not required by IIMs. These facts have been affirmed by the letter of TRU dated 14.02.2017. These facts have been affirmed by the letter of TRU dated 14.02.2017. **Thus we hold that long term course of IIM are courses recognized by law.** In view of that the demand does not survive on merits."*

11. As is already stated the present three appeals are filed for rejection of refund applications in respect of service tax paid under protest by the appellant



towards their service tax liability for the PGPX course. The taxability issue in respect of this course, stands decided by the Hon'ble Tribunal, *supra*.

12. The findings of the adjudicating authority rejecting the refund on the grounds of it being premature, is legally untenable and is therefore set aside. I find that it would be appropriate to remand back the matter to the adjudicating authority to decide the issue within one month of the receipt of this OIA after following the due principles of natural justice.

13. In view of the foregoing, I remand the case back to the adjudicating authority to decide the matter afresh in light of discussion *supra* and also in terms of the decision of the Hon'ble Tribunal vide its order No. A/10622-10623/2019 dated 01.04.2019.

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

*उमा शंकर*

(उमा शंकर)

प्रधान आयुक्त (अपील्स)

Date: 22.05.2019

Attested

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



By RPAD.

To,

M/s Indian Institute of Management,  
Vastrapur,  
Ahmedabad-380015.

Copy to:-

1. The Chief Commissioner, Central Excise, Ahmedabad Zone .
2. The Principal Commissioner, Central Excise, Ahmedabad South.
3. The Deputy/Assistant Commissioner, Central Excise Division-VI, Ahmedabad South.
4. The Assistant Commissioner, System, Central Excise, Ahmedabad South.
5. Guard File.
6. P.A.



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