आयुक्त(अपील)का कार्यालय,
Office of the Commissioner (Appeal),
केंद्रीय जीएसटी, अपील आयुक्तालय,अहमदाबाद
Central GST, Appeal Commissionerate, Ahmedabad
जीएसटी भवन, राजस्वमार्ग, अम्बावाड़ीअहमदाबाद३८००१५.
CGST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015
☎ 07926305065 – टेलेफैक्स07926305136

DIN : 20230464SW000044854B

स्पीड पोस्ट

131 TO 35

क फाइल संख्या : File No : GAPPL/COM/STP/2807/2022

ख अपील आदेश संख्या Order-In-Appeal No. **AHM-EXCUS-001-APP-203/2022-23**
दिनाँक Date : **30-03-2023** जारी करने की तारीख Date of Issue 03.04.2023

आयुक्त (अपील) द्वारापारित
Passed by **Shri Akhilesh Kumar**, Commissioner (Appeals)

ग Arising out of OIO No. **CGST-VI/Dem-17/IIM-HM.10/AC/DAP/21-22** दिनाँक: **22.03.2022** passed by Assistant Commissioner, CGST, Division-VI, Ahmedabad South

ध अपीलकर्ता का नाम एवं पता Name & Address

Appellant

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

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 पूवोक्त 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 हानिकार खाने 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 मे 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.

(क) 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।

(A) 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.

(ख) यदि शुल्क का भुगतान किए बिना भारत के बाहर (नेपाल या भूटान को) निर्यात किया गया माल हो।

(B) 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।

(c) 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 मास के भीतरमूल–आदेश एवं अपील आदेश की दो–दो प्रतियों के साथ उचित आवेदन किया जाना चाहिए।उसके साथ खाता इ.का मुख्य शीर्ष 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 होतो रूपये 200/–फीस भुगतान की जाए और जहाँ संलग्नरकम 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 सेवा कर 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 2nd माला, बहुमाली भवन , असरवा , गिरधरनागर, अहमदाबाद–380004

(a) To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at 2nd Floor,Bahumali Bhawan, Asarwa, Girdhar Nagar, Ahmedabad : 380004. 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 होत 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 शुल्कअधिनियम 1970 यथासंशोधित की अनुसूचि–1 के अंतर्गत निर्धारित किए अनुसार उक्त आवेदन या मूलआदेश यथास्थिति निर्णयन प्राधिकारी के आदेश में से प्रत्येक की एक प्रतिपर रू.6.50 पैसे कान्यायालय 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.

10ण सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण(सिस्टेट),के प्रतिअपीलो के मामले में कर्तव्यमांग(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 सेवाकर के अंतर्गत, शामिल होगा "कर्तव्य की मांग"(Duty Demanded)-

a. *(Section)* खंड 11D के तहत निर्धारित राशि;
इ॰ लिया गलत सेनवैट क्रेडिट की राशि;
ब॰ 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:

(cxxvii) amount determined under Section 11 D;
(cxxviii) amount of erroneous Cenvat Credit taken;
(cxxix) 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

The present appeal has been filed by M/s. Indian Institute of Management, Dr. Vikram Sarabhai Marg, Near Andhajan Mahamandal, Vastrapur, Ahmedabad – 380 015 (hereinafter referred to as the "appellant") against Order in Original No. CGST-VI/Dem-17/IIM-HM.10/AC/DAP/21-22 dated 22.03.2022 [hereinafter referred to as "*impugned order*"] passed by the Assistant Commissioner, CGST, Division-VI, Commissionerate : Ahmedabad South [hereinafter referred to as "*adjudicating authority*"].

2. Briefly stated, the facts of the case are that the appellant were holding Service Tax Registration No. AAATI1247FST001 and engaged in providing Management Consultancy Service, Commercial Training and Coaching Service, Manpower Recruitment Service, Health Club and Fitness service, Renting of Immovable Property and Accommodation Service etc. A test check audit of the records of the appellant for the period from F.Y.2014-15 to F.Y. 2015-16 was conducted by the officers of the Principal Director of Audit (Central), Ahmedabad (CERA). During reconciliation of the financial statements and the ST-3 returns filed by the appellant for F.Y. 2014-15 to F.Y. 2015-16, it was noticed that the gross amount charged by the appellant for various services was Rs. 1,94,55,10,000/-, while the value on which service tax was paid by the appellant was Rs. 1,33,28,37,354/-. Thus, service tax amounting to Rs. 7,97,27,880/- on the differential value amounting to Rs. 61,26,72,646/- was not paid by the appellant. The observation of the CERA audit was communicated to the appellant and clarification was sought from them. The appellant vide letters dated 29.04.2019 and 11.10.2019 stated that they consistently follow fund based accounting. The format of the Financial Statements along with accounting policy followed by them are prescribed by the Ministry of Human Resources Department.

2.1 From the details provided by the appellant, it appeared that they had short paid service tax totally amounting to Rs. 27 lakhs on various services viz. Manpower Recruitment, Commercial Training or Coaching, Mandap

Keeper, Renting of Immovable Property etc. Therefore, the appellant were issued Show Cause Notice bearing No. V/WS06/O&A/IIM/HM.10/19-20 dated 17.10.2019 wherein it was proposed to :

a) Demand and recover service tax amounting to Rs. 27 lakhs under the proviso to Section 73(1) of the Finance Act, 1994.

b) Recover Interest under Section 75 of the Finance Act, 1994.

c) Impose penalty under Sections 77 and 78 of the Finance Act, 1994.

3. The SCN was adjudicated vide the impugned order wherein :

A. The demand of service tax amounting to Rs. 27 lakhs was confirmed along with interest.

B. Penalty amounting to Rs. 10,000/- was imposed under Section 77 of the Finance Act, 1994.

C. Penalty amounting to Rs. 27 lakhs was imposed under Section 78 of the Finance Act, 1994.

4. Being aggrieved with the impugned order, the appellant have filed the present appeal on the following grounds :

i. The impugned order does not disclose any reason whatsoever so as to justify confirmation of the proposals raised against them.

ii. The various contentions raised by them have not been taken into consideration by the adjudicating authority which is apparent from the fact that no finding in that regard has been given in the impugned order.

iii. Had the Department merely applied Rule 3 of the Point of Taxation Rules to determine taxability of the services rendered by them, the basis of assessment would have been perfectly in order.

iv. The flaw arises from the reliance of the department upon the entries in the accounts to determine the point of taxation of services rendered and quantification thereof. Admittedly, the financial statements including the Balance Sheets and the P&L Accounts for the disputed period have been prepared on the basis of Fund based Accounting guideline prescribed by the Ministry of HRD.

v. The basis of recognition and reporting of income and expenditure incurred over the tenure of the project. Thus, income is recognized in the final accounts on year end to the extent of expenditure incurred in that year.

vi. They recognize the revenue from the project only when the project is completed and sometimes the project takes more than one year to complete due to which revenue is entered in the final accounts of that year in which the project gets completed and the income becomes certain. Resultantly, an unintentional discrepancy gets created between the ST-3 return filed by them and their financial accounts.

vii. It is the Point of Taxation Rules that would govern the determination of time of rendition of service and consequent accrual of receipt and liability to tax thereof, and not their final accounts. Instead of determination by application of Rule 3, the department has relied upon the Final Accounts to conclude that the amounts reflected therein have not been offered for service tax.

viii. The reporting of income in Balance Sheet being irrelevant for the purposes of determination of service tax payable as they recognize revenue only when the project is completed and till then only expenses are booked, the basis for such impugned demand is erroneous.

ix. Reliance is placed upon the judgment in the case of Firm Foundations & Housing Pvt. Ltd. Vs. Principal Commissioner of Service Tax – 2018 (16) GSTL 209; Synergy Audio Visual Workshop Pvt. Ltd. Vs. CST, Bangalore – 2008-TIOL-809-CESTAT-BANG; TIL Limited Vs. Commissioner of Service Tax, Kolkata – 2008-TIOL-181-CESTAT-KOL.

x. They had produced the Reconciliation Statement along with Sale Registers, ST-3 Returns and Audited Balance Sheet before the authorities. It was for the department to look into the same and call for further information, if necessary, to assess the receipts in line with Rule 3 of the Rules. Evidently this has not been done and the department has merely adopted the income reflected in the Balance Sheets as receipts for the purpose of Service Tax, which is illegal and invalid. Reliance is placed upon the judgment of the Appellate

Tribunal, Allahabad in the case of Go Bindas in appeal No. ST/70255 of 2018.

xi. The confirmation of demand is even otherwise illegal as it is based on only a part of the reconciliation statement prepared by them.

xii. The finding of the adjudicating authority that they had failed to bring any corroborative evidence to establish excess payment of service tax is unreasonable as the said finding would equally apply to the portion regarding purported short payment of tax.

xiii. The adjudicating authority has erred in not appreciating that bifurcation of the amounts paid/payable under different service tax head was not at all relevant under the new regime. Hence, the same could not have been the bass for suggesting any short payment of tax.

xiv. To sustain the allegation of evasion of tax, it was incumbent upon the department to either allege wrong determination of tax under the ST-3 return or to alternatively show that the amount determined under ST-3 were incorrectly paid. Neither the determination of tax in the ST-3 returns has been questioned nor the payment in terms of the determination has been doubted.

xv. The only objection is with regard to alleged short payment under particular account head, while completely ignoring excess payment in certain account heads, which were provided by them to prove that there was no short payment of service tax in aggregate.

xvi. Despite submitting enough corroborative evidences, the adjudicating authority has wrongly denied that no such evidence was submitted.

xvii. Even otherwise, if it is found that the income heads shown in the Balance Sheet are not relatable to the gross taxable value shown in the ST-3 returns, it is, at best, a case of payment under wrong accounting head.

xviii. While disregarding the excess payment of service tax, the adjudicating authority has not doubted or disputed that such payments have been made by them. Hence, they need not pay service tax again as the same would amount to double taxation. Reliance is placed upon the Circulars issued by the Board and judgments of the Tribunal.

xix. The demand is barred by limitation. Mere presence of differential income owing to different accounting guideline adopted by them is not sufficient to establish intent to evade payment of service tax.

xx. They have been following the same accounting guideline consistently and were subjected to audit before but no objection was raised until 2019. If the assessee is already subjected to audit and the facts are in the knowledge of the parties, notice invoking extended period of limitation cannot be issued and no demand can be confirmed. Reliance is placed upon the judgment in the case of Anand Nishikawa Company Ltd. Vs. Commissioner of Central Excise – (2005) 7 SCC 749.

xxi. The adjudicating authority has erred in imposing penalty under Section 77 and 78 of the Finance Act, 1994 without any malicious intent on their part to evade payment of service tax. Reliance is placed upon the judgment in the case of Hindustan Steel Ltd. Vs. State of Orissa – (1969) 2 SCC 627; Commissioner of Central Excise, Chandigarh Vs. Pepsi Foods Ltd. – 2010 (260) ELT 481 (SC).

xxii. Penalty under Section 77 and 78 are per se impermissible as there is no mens rea on their part to evade tax liability.

xxiii. The adjudicating authority erred in not granting benefit under Section 80 of the Finance Act.

5. Personal Hearing in the case was held on 20.01.2023. Shri Tarun Govil, Advocate, and Shri Paritosh Gupta, Advocate, appeared on behalf of appellant for the hearing. They reiterated the submissions made in appeal memorandum. They submitted a copy of RTI reply dated 12.10.2022 during hearing.

6. The appellant filed additional written submissions on 23.01.2023, wherein it was submitted that :

- Perusal of the letter dated 15.10.2019 received under RTI, which was submitted during the personal hearing, would show that during the course of inquiry itself, the objection of the audit as well as their reply was sent to the concerned Range and it was confirmed that due liability as per the provisions of Service Tax has been discharged by

them and that the objection raised by Audit was not acceptable. Surprisingly, proceedings came to be initiated and confirmed against them.

- The said letter clearly confirms that there has been no short payment of service tax by them. Therefore, the present proceedings could not have been initiated against them without a finding or conclusion as to why their explanation as also the confirmation by the department was incorrect.
- The demand has been confirmed by invoking extended period of limitation. In view of the said letter of the department, it is clear that there was no evasion, much less any non-payment of tax with intent to evade the same.

7. I have gone through the facts of the case, submissions made in the Appeal Memorandum, the additional written submissions and the material available on records. The issue before me for decision is whether the impugned order confirming the demand of service tax along with interest and penalties, in the facts and circumstances of the case, is proper and legal or otherwise. The demand pertains to the period from F.Y. 2014-15 to F.Y. 2017-18 (up to June, 2017).

8. It is observed that the impugned SCN has been issued to the appellant based on the observations of CERA audit that there was a difference in the income reported in the financial statements of the appellant as compared to the income reported in the ST-3 returns filed by the appellant. The observations of the CERA audit was based on test check audit of the records of the appellant for the period F.Y. 2014-15 and F.Y. 2015-16. The service tax short paid in terms of the observations of CERA audit amounted to Rs. 7,97,27,880/-. The observations of the audit were communicated to the appellant, who submitted the requisite details and informed that they were following the fund based accounting consistently over the years. It is further observed that the department had vide letter dated 15.10.2019 informed CERA audit that they were not in agreement with the observations raised and the same did not have any valid ground. This clearly indicates that the

department was in agreement with the contention of the appellant that they were following the fund based accounting system. However, quite surprisingly, the department thereafter proceeded to issue SCN to the appellant wherein the service tax payable has been quantified as amounting to Rs. 27 lakhs for the period from F.Y. 2014-15 to F.Y. 2017-18 (up to June, 2017) on the basis of the difference in the income reported in their financials, as compared to the ST-3 returns.

8.1 It is observed that the appellant had submitted before the adjudicating authority that they had made excess payment of service tax amounting to Rs. 56.29 lakhs, during the period under dispute, against the demand of Rs. 27 lakhs. The appellant had provided details of the excess service tax paid by them to the adjudicating authority. However, the adjudicating authority has rejected the contention of the appellant on the grounds that :

> " For verification of excess payment of tax, the assessee submitted audited balance sheet for F.Y. 2014-15 to 2016-17 wherein, I find that income mentioned under various heads in said audited balance sheets are ambiguous and unexplicit and not relatable with the gross taxable value shown in ST 3 returns in respect of various services provided by them. On the basis of said entries/income heads, it cannot be clearly ascertained that the assessee has made excess payment of service tax. They have further stated in their defence submission that, they are adopting fund based accounting system prescribed by MHRD. In this regard, it is stated that, though they are adopting fund based accounting system but they have not submitted any other documents such a ledger which can corroborate their claim of excess payment of service tax. In absence of any substantiating documents/ledgers, the assessee's claim for excess payment of tax does not survive."

8.2 It is further observed that the adjudicating authority has, except for rejecting the contention of the appellant, regarding excess payment of service tax, not given any finding as to how the appellant was liable to pay service tax as demanded in the SCN issued to them. The adjudicating authority has recorded at Para 8 of the impugned order that the appellant are following the funds based accounting consistently over the years. However, no finding has been given by the adjudicating authority as to whether by applying the funds based accounting system, there would be any short payment of service tax on the part of the appellant.

8.3 It is also pertinent to mention that no justification is forthcoming from the either the SCN issued to the appellant or the impugned order as to why the service tax alleged to be short paid by the appellant was reduced from Rs. 7,97,27,880/- (for F.Y. 2014-15 and F.Y. 2015-16) to Rs. 27 lakhs for F.Y. 2014-15 to F.Y. 2017-18 (up to June, 2017). Further, there is also no justification in the SCN or the impugned order as to why the contention of the appellant was rejected by the department and how the amount of service tax determined to be payable by the appellant was arrived at merely on the basis of the difference in the income reported in the financial statements as compared to the ST-3 returns.

8.4 The appellant have in the course of the personal hearing submitted copy of letter No. CGST/WS0603/RTI/2012-23 dated 12.10.2022 issued to them under RTI by the jurisdictional Assistant Commissioner of CGST vide which a copy of letter No. CGST/WS0603/IIM/HM-10/SCN/2019-20 dated 14/15.10.2019 addressed to CERA audit by the Superintendent, AR-III, Division-VI, CGST, Ahmedabad South was provided to the appellant. In the said letter it is stated that :

> " IIMA discharges service tax liability as per the applicable provisions of Finance Act, 1994 and relevant rules in this regard. Also IIMA was subject to CERA and Service Tax Audit and this practice has been accepted by the Department. No liability has arisen to IIMA during such past years on this account.
> ...
> ...
> On verification of above documents and clarification of the IIMA dated 11.10.2019, it is noticed that all the due liability as per provisions of Service Tax has been discharged by IIMA from time to time. Thus, the objection raised in the said HM is not acceptable. The same may please be closed."

8.5 From the above letter, it can be seen that the appellant was following the accounting practice even in the past and they were subjected to audit from time to time. However, no objection was raised in the course of the audit of the records of the appellant. The department has also clearly stated that the service tax payable by the appellant was discharged by them from time to time. Considering these facts, it is unfathomable as to how these facts were ignored by the department while issuing SCN alleging short payment of service tax by the department. Further, while passing the impugned order, the adjudicating authority has also ignored these facts and

without assigning any reason or giving any finding proceeded to hold that the appellant was liable to pay the service tax demanded in the SCN issued to them. Significantly, the impugned order passed by the adjudicating authority is contrary to the very stand of the department that the CERA audit observation was not having any valid grounds. In view of these facts, I am of the considered view that the confirmation of demand of service tax vide the impugned order is not legally sustainable and is, hence, liable to be set aside.

9. The appellant have also challenged the invocation of extended period of limitation. In this regard, it is observed that as stated in letter dated 14/15.10.2019 to CERA audit, the appellant was subjected to departmental as well as CERA audit in the past and no objection was raised regarding their following the fund based accounting system. Since the appellant was subjected to periodical audit, it cannot be alleged that the facts were not known to the department or that facts were suppressed from the department. Accordingly, I am of the considered view that the demand of service tax by invoking the extended period of limitation is not sustainable.

10. In view of the above facts, I am of the considered view that the impugned order confirming demand of service tax along with interest and penalties is not legally sustainable. Accordingly, I set aside the impugned order and allow the appeal filed by the appellant.

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

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

(Akhilesh Kumar) 30 मार्च 2023

Commissioner (Appeals)
Date: 30.03.2023.

Attested:

(N.Suryanarayanan. Iyer)
Assistant Commissioner (In-situ)
CGST Appeals, Ahmedabad.

F No.GAPPL/COM/STP/2807/2022

BY RPAD / SPEED POST

To

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

The Assistant Commissioner, Respondent
CGST, Division – VI,
Commissionerate : Ahmedabad South.

Copy to:

1. The Chief Commissioner, Central GST, Ahmedabad Zone.
2. The Principal Commissioner, CGST, Ahmedabad South.
3. The Assistant Commissioner (HQ System), CGST, Ahmedabad South. (for uploading the OIA)
4. Guard File.
5. P.A. File.