

आयुक्त (अपील - II) का कार्यालय केन्द्रीय उत्पाद शुल्क  
सैन्टल एक्साइज भवन, सातवीं मंजिल, पौलिटैक्नीक के पास,  
आंबावाडी, अहमदाबाद— 380015.

क फाइल संख्या : File No : V2(ST)44/A-II/2016-17 / 2761-2766  
ख अपील आदेश संख्या : Order-In-Appeal No. AHM-SVTAX-000-APP-0132-16-17  
दिनांक Date : 28.10.2016 जारी करने की तारीख Date of Issue 08/11/16

श्री उमा शंकर, आयुक्त (अपील-II) द्वारा पारित

Passed by Shri Uma Shanker Commissioner (Appeals-II)

ग \_\_\_\_\_ आयुक्त सेवाकर अहमदाबाद : आयुक्तालय द्वारा जारी मूल आदेश सं  
\_\_\_\_\_ दिनांक : \_\_\_\_\_ से सृजित

Arising out of Order-in-Original No SD-02/Ref-244/DRM/2015-16 Dated 04.02.2016

Issued by Assistant Commr STC, Service Tax, Ahmedabad

ध अपीलकर्ता का नाम एवं पता Name & Address of The Appellants  
M/s. Interactive Manpower Solution Pvt ltd Ahmedabad

इस अपील आदेश से असंतुष्ट कोई भी व्यक्ति उचित प्राधिकारी को अपील निम्नलिखित प्रकार से कर सकता है:-

Any person aggrieved by this Order-in-Appeal may file an appeal to the appropriate authority in the following way :-

सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण को अपील:-  
Appeal To Customs Central Excise And Service Tax Appellate Tribunal :-

वित्तीय अधिनियम, 1994 की धारा 86 के अंतर्गत अपील को निम्न के पास की जा सकती:-  
Under Section 86 of the Finance Act 1994 an appeal lies to :-

पश्चिम क्षेत्रीय पीठ सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण ओ. 20, न्यू मैन्टल हास्पिटल कम्पाउण्ड, मेधाणी नगर, अहमदाबाद-380016

The West Regional Bench of Customs, Excise, Service Tax Appellate Tribunal (CESTAT) at O-20, New Mental Hospital Compound, Meghani Nagar, Ahmedabad - 380 016.

(ii) अपीलीय न्यायाधिकरण को वित्तीय अधिनियम, 1994 की धारा 86 (1) के अंतर्गत अपील सेवाकर नियमावली, 1994 के नियम 9 (1) के अंतर्गत निर्धारित फार्म एस.टी- 5 में चार प्रतियों में की जा सकेगी एवं उसके साथ जिस आदेश के विरुद्ध अपील की गई हो उसकी प्रतियाँ भेजी जानी चाहिए (उनमें से एक प्रमाणित प्रति होगी) और साथ में जिस स्थान में न्यायाधिकरण का न्यायपीठ स्थित है, वहाँ के नामित सार्वजनिक क्षेत्र बैंक के न्यायपीठ के सहायक रजिस्ट्रार के नाम से रेखांकित बैंक ड्राफ्ट के रूप में जहाँ सेवाकर की मांग, ब्याज की मांग और लगाया गया जुर्माना रूपए 5 लाख या उससे कम है वहाँ रूपए 1000/- फीस भेजनी होगी। जहाँ सेवाकर की मांग, ब्याज की मांग और लगाया गया जुर्माना रूपए 5 लाख या 50 लाख तक हो तो रूपए 5000/- फीस भेजनी होगी। जहाँ सेवाकर की मांग, ब्याज की मांग और लगाया गया जुर्माना रूपए 50 लाख या उससे ज्यादा है वहाँ रूपए 10000/- फीस भेजनी होगी।

(ii) The appeal under sub section (1) of Section 86 of the Finance Act 1994 to the Appellate Tribunal Shall be filed in quadruplicate in Form S.T. 5 as prescribed under Rule 9(1) of the Service Tax Rules 1994 and Shall be accompanied by a copy of the order appealed against (one of which shall be certified copy) and should be accompanied by a fees of Rs. 1000/- where the amount of service tax & interest demanded & penalty levied of Rs. 5 Lakhs or less, Rs.5000/- where the amount of service tax & interest demanded & penalty levied is is more than five lakhs but not exceeding Rs. Fifty Lakhs, Rs.10,000/- where the amount of service tax & interest demanded & penalty levied is more than fifty Lakhs rupees, in the form of crossed bank draft in favour of the Assistant Registrar of the bench of nominated Public Sector Bank of the place where the bench of Tribunal is situated.

A. J.

(iii) वित्तीय अधिनियम, 1994 की धारा 86 की उप-धाराओं एवं (2ए) के अंतर्गत अपील सेवाकर नियमावली, 1994 के नियम 9 (2ए) के अंतर्गत निर्धारित फार्म एस.टी.-7 में की जा सकेगी एवं उसके साथ आयुक्त, केन्द्रीय उत्पाद शुल्क (अपील) के आदेश की प्रतियाँ (OIA) (उसमें से प्रमाणित प्रति होगी) और अपर आयुक्त, सहायक / उप आयुक्त अथवा A219k केन्द्रीय उत्पाद शुल्क, अपीलीय न्यायाधिकरण को आवेदन करने के निदेश देते हुए आदेश (OIO) की प्रति भेजनी होगी।

(iii) The appeal under sub section (2A) of the section 86 the Finance Act 1994, shall be filed in Form ST-7 as prescribed under Rule 9 (2A) of the Service Tax Rules, 1994 and shall be accompanied by a copy of order of Commissioner Central Excise (Appeals)(OIA)(one of which shall be a certified copy) and copy of the order passed by the Addl. / Joint or Dy. /Asstt. Commissioner or Superintendent of Central Excise & Service Tax (OIO) to apply to the Appellate Tribunal.

2. यथासंशोधित न्यायालय शुल्क अधिनियम, 1975 की शर्तों पर अनुसूची-1 के अंतर्गत निर्धारित किए अनुसार मूल आदेश एवं स्थगन प्राधिकारी के आदेश की प्रति पर रु 6.50/- पैसे का न्यायालय शुल्क टिकट लगा होना चाहिए।

2. One copy of application or O.I.O. as the case may be, and the order of the adjudication authority shall bear a court fee stamp of Rs.6.50 paise as prescribed under Schedule-I in terms of the Court Fee Act, 1975, as amended.

3. सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्यविधि) नियमावली, 1982 में चर्चित एवं अन्य संबंधित मामलों को सम्मिलित करने वाले नियमों की ओर भी ध्यान आकर्षित किया जाता है।

3. Attention is also invited to the rules covering these and other related matters contained in the Customs, Excise and Service Appellate Tribunal (Procedure) Rules, 1982.

4. सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय प्राधिकरण (सीस्तेत) के प्रति अपीलों के मामलों में केन्द्रीय उत्पाद शुल्क अधिनियम, 1984 की धारा 34फ के अंतर्गत वित्तीय(संख्या-2) अधिनियम 2014(2014 की संख्या 25) दिनांक: 06.08.2014 जो की वित्तीय अधिनियम, 1984 की धारा 43 के अंतर्गत सेवाकर को भी लागू की गई है, द्वारा निश्चित की गई पूर्व-राशि जमा करना अनिवार्य है, बशर्ते कि इस धारा के अंतर्गत जमा की जाने वाली अपेक्षित देय राशि दस करोड़ रूपए से अधिक न हो

केन्द्रीय उत्पाद शुल्क एवं सेवाकर के अंतर्गत "माँग किए गए शुल्क" में निम्न शामिल हैं -

- (i) धारा 11 डी के अंतर्गत निर्धारित रकम
- (ii) सेनवैट जमा की ली गई गलत राशि
- (iii) सेनवैट जमा नियमावली के नियम 6 के अंतर्गत देय रकम

⇒ आगे बशर्ते यह कि इस धारा के प्रावधान वित्तीय (सं. 2) अधिनियम, 2014 के आरम्भ से पूर्व किसी अपीलीय प्राधिकारी के समक्ष विचाराधीन स्थगन अर्ज़ी एवं अपील को लागू नहीं होंगे।

4. For an appeal to be filed before the CESTAT, it is mandatory to pre-deposit an amount specified under the Finance (No. 2) Act, 2014 (No. 25 of 2014) dated 06.08.2014, under section 35F of the Central Excise Act, 1944 which is also made applicable to Service Tax under section 83 of the Finance Act, 1994 provided the amount of pre-deposit payable would be subject to ceiling of Rs. Ten Crores,

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

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

⇒ Provided further that the provisions of this Section shall not apply to the stay application and appeals pending before any appellate authority prior to the commencement of the Finance (No.2) Act, 2014.

4(1) इस संदर्भ में, इस आदेश के प्रति अपील प्राधिकरण के समक्ष जहाँ शुल्क अथवा शुल्क या दण्ड विवादित हो तो माँग किए गए शुल्क के 10% भुगतान पर और जहाँ केवल दण्ड विवादित हो तब दण्ड के 10% भुगतान पर की जा सकती है।

4(1) In view of above, an appeal against this order shall lie before the Tribunal on payment of 10% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute.

## ORDER IN APPEAL

M/s Interactive Manpower Solution, 301, President Plaza, Near Thaltej cross Road, S.G. Highway, Ahmedabad- 380 054 (*hereinafter referred to as 'appellants'*) holding service tax registration No. AABCI 4910K ST001, have filed the present appeals against the Order-in-Original number SD-02/REF-244/DRM/2015-16 dated 04.02.2016 (*hereinafter referred to as 'impugned orders'*) passed by the Asst. Commissioner, Service Tax, Div-II, APM Mall, Ahmadabad (*hereinafter referred to as 'adjudicating authority'*);

2. Briefly stated facts of the case are that appellant had filed a refund claim of accumulated credit of ₹19,70,780/- for period Jan-2015 to March 2015 under Notification No. 27/2012- CE (NT) on 04.02.2016. Refund of Rs. 18,70,492/- was sanctioned where as Rs. 1,00,288/- on event management service was rejected vide impugned OIO. Being Aggrieved appellant has filed this present appeal for Rs. 1,00,288/- and for claiming Interest for delayed refund. In appeal memo it is contended as below-

- I. Appellant has availed event management service for Business review meeting, Annual performance review to (a) to formulate business, financial and futuristic strategies (b) to discuss and workout expansion and diversification strategies (c) to evaluate and review talent and its performance, their contribution and rewards (d) to evaluate and review its business with various clients, its growth prospects (e) for enhancement of business and sales promotion etc. Therefore said service is event management is input service.
- II. The appellant for its successful business operations periodically holds half yearly Business review meet and annual performance review and strategy conference.
- III. Services which are not specifically excluded in the definition of input service and have nexus with output service are eligible for cenvat credit as input service. Said event management has nexus with out put service therefore appellant is eligible for refund of accumulated credit.
- IV. Appellant has filed refund on 10.08.2015 and has been paid refund of Rs. 18,70,492/- on 04.02.2016. As per section 11BB of CEA, 1944, where delay of grant of refund is more than three months, the appellant is eligible for interest.

3. Personal hearing in the case was granted on 14.09.2016 wherein Bishan Shah, CA on behalf of the said appellant, appeared before me and



reiterated the contention of their submission. In course of hearing Shri Bishan Shah, CA, requested for seven more days for additional submission which is so far not submitted.

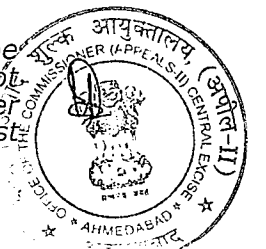
## DISCUSSION AND FINDING

4. I have carefully gone through the facts of the case on records, grounds of the Appeal Memorandum, the Written Submission filed by the respondent and oral submission made at the time of personal hearing. The adjudicating authority has rejected the refund of Rs. 1,00,288/- on recreational service received from M/s Refuge Event Management Company Ltd. it was held in impugned OIO that absence of such recreational services have no adverse impact on quality and efficiency of service exported, therefore said recreational service is not input service and it falls under Exclusion of service as per clause (c) of Rule 2 of Cenvat Credit Rules, 2004.

5. I find that event management service was availed in connection with sales and promotion of its products and for enhancement of business; that service tax was remitted on the taxable !! event management; service and credit of such tax was taken and utilised for providing taxable service in terms of the provisions of Rule 2(l) of the Cenvat Credit Rules, 2004 as this activity related to the appellant's business and was towards advertisement and sales promotion, and this was an input service used in relation to its manufacture. To substantiate the claim the appellant has produced the photographs of seminar conducted. I conclude from photograph and submissions made that event management service is input service for providing out put service for appellant. On the aforesaid analyses, I conclude that refund of Rs. 1,00,288/- is admissible to appellant.

6. Regarding appellant's claim of interest for delayed refund, I find that payment of interest on sanctioning of refund beyond three months from the date of receipt of the application of refund claim till the date of refund of such duty is governed by the provisions of Section 11BB of the Central Excise Act, 1944 made applicable to the service tax cases vide Section 83 of the Finance Act, 1994. Section 11BB ibid is reproduced as under for better appreciation of the issue in appeal.

*SECTION [Interest on delayed refunds. 11BB. — If any duty ordered to be refunded under sub-section (2) of section 11B to any applicant is not refunded within three months from the date of receipt of application under sub-section (1) of that section, there shall be paid to that applicant interest*



*at such rate, [not below five per cent] and not exceeding thirty per cent per annum as is for the time being fixed [by the Central Government, by Notification in the Official Gazette], on such duty from the date immediately after the expiry of three months from the date of receipt of such application till the date of refund of such duty"*

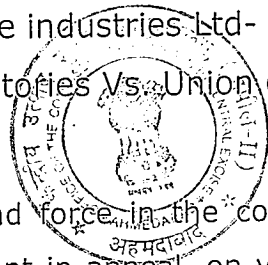
7. Further, payment of interest on sanctioning of refund beyond three months from the date of receipt of the application of refund claim till the date of refund of such duty is a settled issue in pursuance to the various judgements passed by the higher judicial forums as well as being clarified by the CBEC also from time to time. The CBEC vide Circular No.670/61/2002-CX dated 01.10.2002 being relevant in this case, is interalia reproduced as under.

*"In this connection, Board would like to stress that the provisions of section 11BB of Central Excise Act, 1944 are attracted automatically for any refund sanctioned beyond a period of three months. The jurisdictional Central Excise Officers are not required to wait for instructions from any superior officers or to look for instructions in the orders of higher appellate authority for grant of interest."*

8. Further, I find that the issue in question is also decided by the higher judicial forums in the following judgments, wherein it is held that the interest should be paid from the expiry of three months from the date of receipt of refund application.

- J.K.cement Works V/s ACC- 2004(170) ELT 4 (Raj. H.C.)- Also maintained by S.C.-2005 (179) ELT A150 (S.C.)
- Kerala Chemicals & Protines Ltd.- 2007 (211) ELT 259- (Tri. Bang.)
- CEX,Pune-III V/s Movilex Irrigation Ltd.-2007 (207) ELT 617 (Tri. Mumbai)
- CCE V/s Reliance industries Ltd- 2010(259)ELT 356 (Guj HC)
- Ranbaxy Laboratories V/s Union of India, 2011(273)ELT.3.(SC)

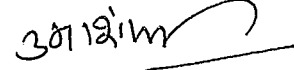
9. In view of above, I find force in the contention of the appellant and also reliance placed by the appellant in appeal, on various decisions/judgements of the higher judicial forums and the CBEC circulars issued in this regard being relevant to the issue, also support the contention of the appellant. Accordingly, I hold that the appellant is eligible of the interest at such rate for the time being fixed by the Central Government by Notification in the Official Gazette on such refund amount



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from the date immediately after the expiry of three months from the date of such application of refund till the date of refund of such service tax.

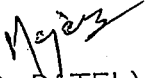
10. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।
10. The appeals filed by the appellant stand disposed off in above terms.



(उमा शंकर)

आयुक्त (अपील्स - II)

ATTESTED



(R.R. PATEL)

SUPERINTENDENT (APPEAL-II),  
CENTRAL EXCISE, AHMEDABAD.

To

M/s Interactive Manpower Solution,  
301, President Plaza,  
Near Thaltej cross Road,  
S.G. Highway,  
Ahmedabad- 380 054

Copy to:

- 1) The Chief Commissioner, Central Excise, Ahmedabad.
- 2) The Commissioner, Service Tax, Ahmedabad-II.
- 3) The Additional Commissioner, C. Ex, Ahmedabad-II
- 4) The Asst. Commissioner, Service Tax, Div-II, APM Mall, Ahmedabad.
- 5) The Asst. Commissioner (System), Service Tax, Ahmedabad.
- 6) Guard File.
- 7) P.A. File.