

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)0105&106/A-II/2016-17 *HG3/HG7*  
ख अपील आदेश संख्या : Order-In-Appeal No. AHM-SVTAX-000-APP-240-241-16-17  
दिनांक Date : 27.02.2017 जारी करने की तारीख Date of Issue 28/02/17

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

Passed by Shri Uma Shanker Commissioner (Appeals-II)

*A. file*

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

Arising out of Order-in-Original No SD-02/Ref-15&16/DRM/2016-17 Dated 27.04.2016 Issued  
by Assistant Commr STC, Service Tax, Ahmedabad

घ अपीलकर्ता का नाम एवं पता Name & Address of The Appellants  
M/s. Indian Intitute of Technology Gandhinagar 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 :-

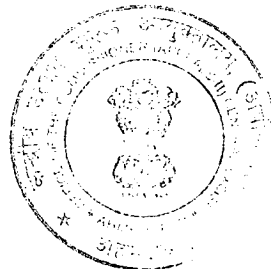
वित्तीय अधिनियम, 1994 की धारा 86 के अंतर्गत अपील को निम्न के पास की जा सकती:-  
Under Section 86 of the Finance Act 1994 an appeal lies to :-

पश्चिम क्षेत्रीय पीठ सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण ओ. 20, न्यू मैन्टल हास्पिटल कम्पाउण्ड, मेघाणी 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 accompany ed 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 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.



(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, 1994 की धारा 34 के अंतर्गत वित्तीय (संख्या-2) अधिनियम 2014 (2014 की संख्या 24) दिनांक: 06.08.2014 जो की वित्तीय अधिनियम, 1994 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 रुपए 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 होगा।

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,

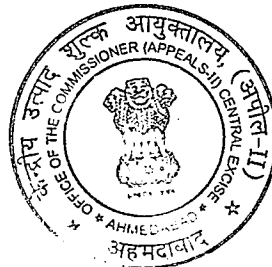
Under Central Excise and Service Tax, "Duty demanded" shall include:

- (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. Indian Institute of Technology Gandhinagar, Vishvakarma Govt. Engineering College Campus, Chandkheda, Ahmedabad (*hereinafter referred to as 'appellants'*) have filed the present appeal against the following Orders-in-Original (*hereinafter referred to as 'impugned order'*) passed by the Assistant Commissioner, Service Tax, Division-II, Ahmedabad (*hereinafter referred to as 'adjudicating authority'*);

| Sr. No. | OIO No.                  | OIO date   | Amount of refund claimed (₹) | Date of filing the refund claim | Status of the claim |
|---------|--------------------------|------------|------------------------------|---------------------------------|---------------------|
| 1       | SD-02/Ref-15/DRM/2016-17 | 27.04.2016 | 4,47,486                     | 22.01.2016                      | Rejected u/s 11B    |
| 2       | SD-02/Ref-16/DRM/2016-17 | 27.04.2016 | 41,535                       | 22.01.2016                      | Rejected u/s 11B    |

2. The facts of the case, in brief, are that the appellants are holding Service Tax Code number AAATI7352MST001 and engaged in providing educational services. They had filed refund claims of ₹ 4,47,486/- and ₹ 41,535/- on 22.01.2016 stating that during the period from 01.04.2013 to 31.10.2013, they had received security service from M/s. Security and Intelligence Services (India) Ltd. and catering service from M/s. Bon Temps Pvt. Ltd. and paid them Service tax of ₹ 4,47,486/- and ₹ 41,535/- respectively. On being confirmed that as per mega exemption Notification number 25/2012-ST, the services provided to an educational institute are exempted from paying Service Tax, they filed the above refund claims before the adjudicating authority.

3. During scrutiny of the claim above claims, the adjudicating authority had found that the claims are time barred in view of Section 11B of the Central Excise Act, 1944. Accordingly, show cause notices dated 28.03.2016 were issued to the appellants which were adjudicated by the adjudicating authority vide the impugned orders. The adjudicating authority, vide the above impugned orders, rejected entire claims of refund amounting to ₹ 4,47,486/- and ₹ 41,535/- respectively under Section 11B of the Central Excise Act, 1944 as made applicable to Service Tax under Section 83 of the Finance Act, 1994.

4. Being aggrieved with the impugned order the appellants have preferred the present appeals. The appellants have submitted that since they had wrongly paid Service Tax to the service providers, which was actually not required to be paid, they had initially submitted a refund claim with the Service Tax department, Gandhinagar Division on 26.03.2014. Thereafter,



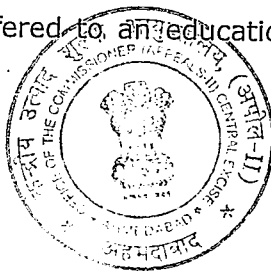
instead of receiving a proper speaking order, the appellants received a letter dated 21.05.2014 from the Deputy Commissioner, Gandhinagar Division stating that they were not eligible for the refund claim and their claim was returned back. Later on, the appellants received another letter, dated 14.07.2015, from the Deputy Commissioner, Gandhinagar Division asking the appellants to file the claim before concerned jurisdictional Deputy/ Assistant Commissioner. After the receipt of the said letter, they filed fresh refund claims before the adjudicating authority who has rejected the said claims under Section 11B of the Central Excise Act, 1944 as made applicable to Service Tax under Section 83 of the Finance Act, 1994. The appellants pleaded that the adjudicating authority has failed to consider the fact that the claim was initially filed with the Service Tax, Gandhinagar Division.

5. Personal hearing in the matter was granted and held on 21.02.2017. Shri Darshan Belani, Chartered Accountant and Shri Biresh Chaubey, Assistant Registrar, IIT, Gandhinagar, appeared before me and reiterated the contents of appeal memo.

6. I have carefully gone through the facts of the case on records, grounds of the appeal, and written submission put forth by the appellant as well as oral submission made at the time of personal hearing. Looking to the facts of the case, I proceed to decide the case on merits.

7. I find that initially, the claim was filed before the Deputy Commissioner, Central Excise, Gandhinagar on 26.03.2014, who returned back the claim vide letter dated 21.05.2014 stating that they were not eligible for the refund claim. The claim should have been sent to concerned office without causing delay. In a catena of decisions, it has been held that the date of initial submission of rebate or refund application will be the actual date of submission of refund application. Therefore, the refund applications are not hit by limitation under Section 11B of the Central Excise Act, *ibid*.

8. Further, in paragraph 7.4 of both the impugned orders, I find that the adjudicating authority has stated that it is the prerogative of the service provider to avail the exemption and as the service provider had opted to pay Service Tax, the service recipient cannot claim the exemption. In the present case, I find that the appellants had decided to file the claims of refund on the ground that as per exemption Notification No. 25/2012-ST dated 20.06.2012, the service provider was not supposed to pay Service Tax and therefore, no Service tax would have been collected from the appellants by the service provider. In this regard, to start with, I would like to state that in serial number 9 of the Notification number 25/2012-ST dated 20.06.2012, it is very clearly explained the types of services to be offered to an educational institution for claiming exemption.



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"Services provided,—

(a) by an educational institution to its students, faculty and staff;

(b) to an educational institution, by way of,—

(i) transportation of students, faculty and staff;

(ii) catering, including any mid-day meals scheme sponsored by the Government;

(iii) security or cleaning or house-keeping services performed in such educational institution;

(iv) services relating to admission to, or conduct of examination by, such institution"

For further clarification, contents of the Circular number 172/7/2013-ST dated 19.09.2013 is quoted below;

"Services provided to an educational institution in respect of education exempted from service tax, by way of,—

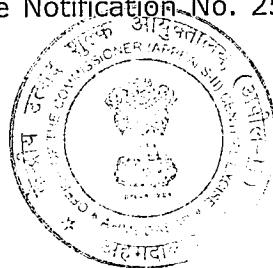
(a) auxiliary educational services; or

(b) renting of immovable property;".

As defined in the said notification, "auxiliary educational services" means any services relating to imparting any skill, knowledge, education or development of course content or any other knowledge-enhancement activity, whether for the students or the faculty, or any other services which educational institutions ordinarily carry out themselves but may obtain as

outsourced services from any other person, including services relating to admission to such institution, conduct of examination, catering for the students under any mid-day meals scheme sponsored by Government, or transportation of students, faculty or staff of such institution.

Thus, it is quite clear that an absolute exemption is granted to the services that are related to the service of education. Now, the question is if the provider of the service has not availed the benefit of the exemption, can the receiver of the service avail the same? In the above notification, it can be seen that the services listed are exempt from payment of Service Tax. Thus, it is quite clear to comprehend that whether the service provider opts for the exemption or not, the services provided under the above notification remain exempted from payment of Service Tax. Therefore, no question of payment of Service Tax arises on the part of the service provider and hence whatever amount of Service Tax has been collected by the service provider from the appellants is without the authority of law and needs to be refunded back. The adjudicating authority, in the impugned orders, has verified the circumstances of the refund claims in light of the service providers instead of the appellants. The adjudicating authority, keeping in mind the Notification No. 25/2012-ST



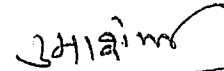
dated 20.06.2012, should have granted the refunds after proper verification of documents of the appellants. Therefore, as per the above discussion, I allow the refund subject to verification of documents.

9. Finally, the adjudicating authority has claimed in paragraph 7.6 of both the impugned orders that refund amount cannot be ascertained as the appellants had not submitted relevant ledgers and ST-3 returns filed by them for the relevant period. The adjudicating authority, in the impugned orders, has not mentioned as to whether he had called for those documents from the appellants or simply rejected the claim without giving them the opportunity to represent themselves with the related documents. The appellants are not supposed to know the things unless they are told so, in writing. This, I believe, a sheer case of denial of natural justice by the authority to the appellants which needs to be rectified.

10. Thus, in view of discussion at paragraph 9 above, and in the fitness of things, it would be just and proper to remand the matter to the adjudicating authority to allow the refund after proper verification and quantification of the amount. The appellants are also directed to put all the evidences before the adjudicating authority in support of their contention as well as all relevant details/documents etc. that may be asked for by the adjudicating authority when the matter is heard in remand proceedings before the adjudicating authority. The appeal filed by the appellant is disposed off accordingly.

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

11. The appeal filed by the appellants stands disposed off in above terms.



(UMA SHANKER)

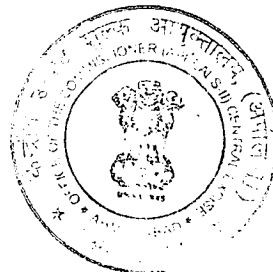
COMMISSIONER (APPEAL-II)

CENTRAL EXCISE, AHMEDABAD.

ATTESTED

  
(S. DUTTA)

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



To,

M/s. Indian Institute of Technology Gandhinagar,  
Vishvakarma Govt. Engineering College Campus, Chandkheda,  
Ahmedabad-380 014

**Copy to:**

- 1) The Chief Commissioner, Central Excise, Ahmedabad.
- 2) The Commissioner, Service Tax, Ahmedabad.
- 3) The Dy./Asst. Commissioner, Service Tax, Division-II, Ahmedabad.
- 4) The Asst. Commissioner (System), Service Tax Hq, Ahmedabad.
- 5) Guard File.
- 6) P. A. File.

