

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)139 /A-II/2015-16 /1511 To 1515

ख अपील आदेश संख्या : Order-In-Appeal No..AHM-SVTAX-000-APP-083 -16-17

दिनांक Date : 26.08.2016 जारी करने की तारीख Date of Issue 30/08/16

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-02/17/AC/2015-16 Dated 30.10.2015

Issued by Asstt. Commr., STC, Div-II, Service Tax, Ahmedabad

घ अपीलकर्ता का नाम एवं पता Name & Address of The Appellants

M/s. Indian Institute of Management 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  
हॉस्पिटल 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 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.



G. Jil

(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 24) 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, बशर्त 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 है -

- (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 बशर्त यह कि इस धारा के प्रावधान वित्तीय (सं. 2) अधिनियम, 2014 के आरम्भ से पूर्व किसी अपीलीय प्राधिकारी के समक्ष विचाराधीन स्थगन अर्जी 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,

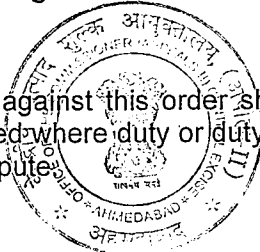
Under Central Excise and Service Tax, "Duty demanded" shall include:

- (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

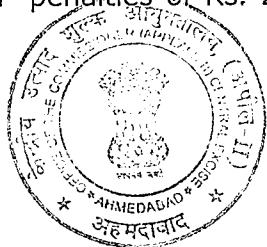
This order arises on account of an appeal filed by M/s Indian Institute of Management, IIM Road, Vastrapur, Polytechnic, Ahmedabad-380 015 (hereinafter referred to as 'the Appellant') against Order-in-Original NO.SD-02/17/AC/2015-16 Dated 05.11.2015 (hereinafter referred to as the 'impugned order' for the sake of brevity) passed by the Asst. Commissioner, Service Tax, Division-I, Ahmedabad (hereinafter referred to as the "Adjudicating Authority" for the sake of brevity).

2. Briefly stated the facts of the case are as under the appellant is engaged in providing the services under the category of "Management Consultancy Services" besides so many other services and holding Service Tax Registration No. AAATI1247FST001. During the course of Audit for the year 2009-10 to 2013-14, it was noticed that the appellant has availed CENVAT credit of Rs. 2,63,461/- for period 2009-10 to June- 2012 on maintenance of the website of IIM alumni association which was exclusively for providing exempted service. As per explanation II of Rule 6(3) of CCR, 2004 credit of input service used exclusively in exempted service is not allowed.

3. Accordingly, a Show Cause Notice dated 25.09.2014 was issued to the appellant proposing recovery of wrongly availed cenvat credit under rule 14 of CCR, 2004 read with proviso to section 73(1) of FA 1994 by invoking extended period. Interest under rule 14 of CCR 2004 read with section 75 of FA 1994 ,penalty under rule 15(1) of CCR 2004 read with section 76 of FA 1994, ,penalty under rule 15(3) of CCR 2004 read with section 78 of FA 1994 was proposed to be imposed. It is argued in SCN that Appellant had never disclosed such credit availment to department moreover as per Rule 9(6) of CCR-2004 burden of proof regarding admissibility of credit lie upon service provider taking credit.

4. Appellant argued before adjudicating authority that they are providing dutiable and exempted service but not maintaining separate record as they are reversing the proportional credit on exempted service as per rule 6(3) of CCR, 2004. However no records were produced before adjudicating authority to prove that credit taken on input of exempted service was reversed. Moreover it was argued that since regular audit is undertaken periodically it was in knowledge of department hence no extended period can be invoked. But this argument was turned down by adjudicating authority by observing that, the very fact that CENVAT credit availed on services used for "maintenance of webcite" and reflected in the ledger itself is a willful mis-statement.

5. Accordingly the adjudicating authority vide impugned order had confirmed the demand of Rs 2,63,461/- under rule 14 of CCR, 2004 read with proviso to section 73(1) of FA 1994 by invoking extended period, and also ordered to pay interest at the appropriate rate under rule 14 of CCR, 2004 read with section 75 of FA 1994. Also imposed equal penalties of Rs. 2,63,461/- under rule 15(3) of CCR, 2004 read with



*(Handwritten signature)*

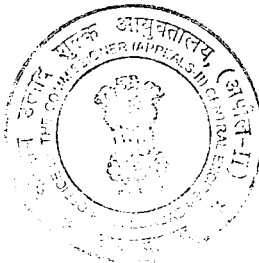
section 78 of FA 1994 for suppressing the facts from the department. However no penalty was imposed under Section 76 of FA, 1994 .

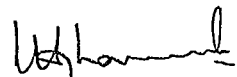
6. Being aggrieved with the impugned order, the appellant has filed the present appeal on 27.01.2016 followed with written submission on the grounds which are interalia mentioned that appellant was admissible for input credit as aid services received are covered under definition of input service as defined under rule 2(1) of CCR, 2004; that when appellant had opted for rule 6(3) of CCR, 2004, and proportionally reversed the cenvat credit, the reversal of cenvat credit separately is not sustainable ; that extended period is not sustainable as periodical and regular audit is conducted by department and that penalty under rule 15(3) of CCR 2004 read with section 78 of FA 1994 can not be imposed.

### DISCUSSION AND FINDING

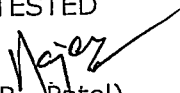
7. Personal hearing was granted on 02.08.2016 wherein Shri Vipul Kandhar, Chartered reiterated the contents of the appeal. I find that the appeal has been filed on 27.01.2016 after receipt of the impugned order on 05.11.2015. As per the provisions of Section-85 (3) of the Finance Act, 1994 as amended vide the Finance Act, 2012 made effective from 28.05.2012, an appeal was required to be presented before the Commissioner, Central Excise (Appeals) within two months from the date of receipt of the impugned order. The appeal should have been filed within two months from 05.11.2015 but the same was filed on 27.01.2016 and thus, there is a delay of 22 days in filing the appeal. Further, the Proviso to Section-85 (3) of the Finance Act, 1994 empowers the Commissioner, Central Excise (Appeals) to allow the appeal to be presented within a further period of one month if the appellate authority is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within aforesaid period of two months. I find that for the said delay in filing appeal, the appellant had neither filed any Condonation of Delay Application nor pleaded during the personal hearing held before me. Further, the appellant had also not mentioned any thing about the said delay neither in the appeal memorandum nor in the written submission filed before me. Thus, without going into merit of the case and in view of the above facts, I find that the appeal filed by the appellant is time barred.

8. Accordingly, the appeal filed by the appellant is rejected being time barred.



  
(UMA SHANKER)  
COMMISSIONER (APPEAL-II)  
CENTRAL EXCISE, AHMEDABAD.

ATTESTED

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

BY R.P.A.D.

M/s Indian Institute of Management,  
IIM Road, Vastrapur, Polytechnic,  
Ahmedabad-380 015

Copy To:-

1. The Chief Commissioner, Central Excise, Ahmedabad zone, Ahmedabad.
2. The Commissioner, Service Tax, Ahmedabad.
3. The Deputy/Assistant Commissioner, Service Tax, Div.I, Ahmedabad.
4. The Assistant Commissioner, System-Ahmedabad
5. P.A. File.
6. Guard File.



