

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)133 /A-II/2015-16 / 1522 to 1526  
ख अपील आदेश संख्या : Order-In-Appeal No. AHM-SVTAX-000-APP-086 -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-02/18/AC/2015-16 Dated 30.10.2015

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

ध 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 हास्पिटल कम्पाउण्ड, मेघानी 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.



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(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 (सीस्टेट) के प्रति अपीलों के मामलों में केन्द्रीय उत्पाद शुल्क अधिनियम, 1984 की धारा 35फ के अंतर्गत वित्तीय(संख्या-2) अधिनियम 2014(2014 की संख्या 29) दिनांक: 06.08.2014 जो की वित्तीय अधिनियम, 1994 की धारा 23 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,

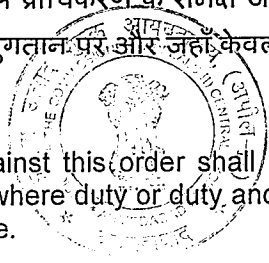
Under Central Excise and Service Tax, "Duty demanded" shall include:

- (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.



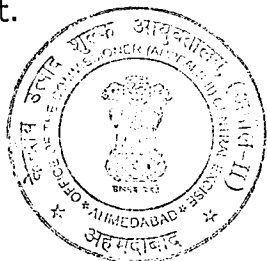
ORDER-IN- APPEAL-

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-02/18/AC/2015-16 Dated 30.10.2015 (hereinafter referred to as the 'impugned order' for the sake of brevity) passed by the Asst. Commissioner, Service Tax, Division-II, Ahmedabad (hereinafter referred to as the "Adjudicating Authority" for the sake of brevity).

2. Briefly stated the facts of the case are that 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 credit on photography/ videography /webcasting services utilized for photography/ ideography /webcasting of various activities like PGP inauguration, confluence, INSIGHT programmes etc. arranged by appellant. Since service received were not utilized in providing taxable service and since such inputs does not fall in the definition under rule 2(I) of CCR, 2004, SCN dt. 25.09.2014 invoking extended period was issued proposing to recover under section 73(1) read with rule 14 of CCR, 2004 wrongly availed credit of Rs. 56,665/- with interest under section 75. Penalty under section 76 and 78 were also proposed.

3. Appellant had contended before adjudicating authority that that said inputs are used for providing output services i.e. education, consultancy and research project and inputs are covered in definition under rule 2(I) of CCR, 2004. Service are used for providing taxable and exempted service and they have opted for rule 6(3) of CCR, 2004 and have reversed proportional credit. Moreover since appellant is regularly and periodically audited no extended period can be invoked.

4. The Adjudicating Authority had confirmed under section 73(1) Finance Act, 1994 read with rule 14 of CCR, 2004 the demand of Rs 56,665/- wrongly availed credit also ordered to pay interest at the appropriate rate under Section 75 Finance Act, 1994 and rule 14 of CCR,2004. Also imposed penalties of Rs. 56,665/- under Section 78 of the Finance Act, 1994 for suppressing the facts from the department.



*(Handwritten mark)*

5. Being aggrieved with the impugned order, the appellant has filed the present appeal ON 20.01.2016 followed with written submission on the grounds which are interalia mentioned as under:-

(i) Photography/ Videographer /Webcasting services are utilized used for taking Photography/ Videographer of various activities like PGP inauguration, confluence, INSIGHT programmes etc. arranged by appellant and hoisting them on website. Such programmes help the appellant in building brand image of appellant. Further such programmes are part of marketing and promotional activities for various services provided by appellant.

(ii) said inputs services are covered in definition under rule 2(I) of CCR, 2004.

(iii) Appellant has been depositing service tax on MDP Programme, Recruitment services, Management Consultancy etc. Said input services are utilized for providing exempted as well as taxable service. Hence appellant had opted for rule 6(3) of CCR-2004 and has reversed credit proportionally from time to time.

6. Again personal hearing was granted on 02.08.2016 wherein Shri Vipul Khandhar, Chartered reiterated the contents of the appeal memorandum.

#### **DISCUSSION AND FINDING**

7. I have carefully gone through the facts of the case on records, grounds of the Appeal Memorandum, and written/oral submissions made by the appellants at the time of personal hearing.

8. I find that contention of revenue is that said input services are not utilized in taxable services where as appellant is contending that said services are utilized in marketing and sales promotion of their out put taxable services and exempted service and are reversing credit as per the procedure as prescribed under Rule-6(3A) of Cenvat Credit Rules, 2004.

9. I find from the website of IIM [www.iimahd.ernet.in](http://www.iimahd.ernet.in) that website is showing recruitment advertisement, programme schedule , courses available , programme held etc. Advertisement or sale promotion is essential for marketing of out put service therefore said services are indirectly utilized for providing output service. The word "in relation to" is very broad expression. They are not the word of restrictive content. Moreover said services are not services specially excluded from definition of 'Input Services' defined under Rule 2(I) of CENVAT Credit Rules , 2004.

10. Student events include Confluence, symposium, and Connexion, an annual event. Confluence is the annual international management symposium



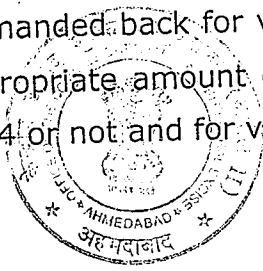
hosted by IIM Ahmedabad. Chaos is the annual cultural festival of IIMA. Insight is the annual Market Research festival of IIM. Insight is the annual Market Research festival of IIM. I find that such events are indirectly or directly related to marketing of taxable service provided. In view of discussion herein above I hold that photography /videographer and webcasting services utilized are admissible for cenvat credit.

11. Adjudicating authority in impugned OIO has stated that appellant though has claimed that they have opted for procedure under Rule 6(3) but no where produced documentary evidence to substantiate such proposition.

12. In view of the facts and discussion herein above, the appellant's claim of compliance of the procedure under Rule 6(3) needs to be re-examined and re-looked into and in the interest of justice, it would be just and proper to remit the matter to the Adjudicating Authority to decide the case afresh so as to verify whether the amount reversed by the appellant was as per the procedure as prescribed under Rule-6(3) of Cenvat Credit Rules, 2004 or not, after due compliance of the principles of natural justice and after proper appreciation of the evidences that may be put forth by the appellant before him.

13. The extended period is applied in the show-cause notice on the ground of willful suppression of fact. The willful suppression cannot be assumed and/or presumed merely on failure to declare certain facts unless it is preceded by deliberate non-disclosure to evade the payment of tax. I find considerable force in the submission by the learned Counsel for the appellants that there was no suppression on its part. Since all the financial records relating to the activities in question had been subjected to scrutiny by the Internal Audit party of the department, there were no additional material based on which show cause notice was issued and adjudication proceedings concluded. I find substance in the claim that prima facie extended period could not have been validly invoked in the instant case as the records were studied in detail during the audit conducted by the internal audit party of the department. My view is supported by decision in case of M/s Marikar Motors Ltd. versus Commissioner of Central Excise, Thiruvananthapuram- Citation [2011 (23) STR 458 (Tri. Bang.)]. I find that appellant has not produced any evidence before me to substantiate that audit was conducted by revenue for previous period. it would be in fitness of the case to remand back for varying the same.

14. Case is remanded back for verifying the facts whether the appellant has reversed the appropriate amount of cenvat credit as per Rulle-6(3) of Cenvat Credit Rules, 2004 or not and for verifying the documentary evidences that may



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be submitted by appellant to substantiate that limitation period is invocable or not.


15. The appellant is also directed to put all the evidences before the Adjudicating Authority in support of their contention as well as any other details/documents etc. that may be asked for by the Adjudicating Authority when the matter is heard in remand proceedings before the Adjudicating Authority. Adjudicating authority is directed to pass fresh order. These findings of mine are supported by the decision/order dated 03.04.2014 of the Hon'ble High Court, Gujarat in the Tax appeal No.276//2014 in the case of Commissioner, Service Tax, Ahmedabad V/s Associated Hotels Ltd. and also by the decision of the Hon'ble CESTAT, WZB Mumbai in case of Commissioner of Central Excise, Pune-I Vs. Sai Advantium Ltd and reported in 2012 (27) STR 46 (Tri. - Mumbai).

16. The appeal filed by the appellant is disposed off by way of remand in above terms.

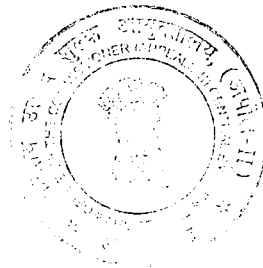
  
(UMA SHANKER)

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.





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