



• आयुक्तालय (अपील-I) केंद्रीय उत्पादन शुल्क \*  
सातमाँ तल, केंद्रीय उत्पाद शुल्क भवन,  
पोलिटेकनिक के पास, आमबाबाडि,  
अहमदाबाद - 380015.

रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या : File No : V2(GTA)14/ST-4 /STC-III/2016-17 / 4425 to 4429  
Stay Appl.No. NA/2016-17

ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-EXCUS-003-APP-045-2017-18  
दिनांक 10.07.2017 जारी करने की तारीख Date of Issue 18.07.17

श्री उमा शंकर आयुक्त (अपील-I) द्वारा पारित  
Passed by Shri. Uma Shanker, Commissioner (Appeal-I)

ग Deputy Commissioner, Service Tax, Gandhinagar केंद्रीय उत्पाद शुल्क, Ahmedabad-III द्वारा जारी मूल  
आदेश सं 04/Ref/ST/DC/2016 दिनांक: 08/04/2016, से सुजित

Arising out of Order-in-Original No. 04/Ref/ST/DC/2016 दिनांक: 08/04/2016, issued by Deputy  
Commissioner, Service Tax, Gandhinagar, Ahmedabad-III

घ अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent

The Commissioner of Central Excise Ahmedabad III  
Vs  
Banaskantha Dist. Co. Milk Producer

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) केंद्रीय उत्पादन शुल्क अधिनियम, 1994 की धारा अतत नीचे बताए गए मामलों के बारे में पूर्वोक्त 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, 4<sup>th</sup> 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 हानि कारखाने 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 में हो माल की प्रक्रिया 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.

(b) 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.

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

... 2 ...



(ख) 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 मामलों में जो भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित है।

(b) 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.

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

(c) 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 ड्यूटी क्रेडिट 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।

(d) 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 दिनांक से तीन मास के भीतर मूल-आदेश एवं अपील आदेश की दो-दो प्रतियों के साथ उचित आवेदन किया जाना चाहिए। उसके साथ खाता इ. का मुख्यशीर्ष 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 रुपये या उससे कम हो तो रुपये 200/- फीस भुगतान की जाए और जहाँ संलग्न रकम 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 सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील:-  
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1944 की धारा 35-बी/35-इ के अंतर्गत:-

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 ओ-20, न्यू मैन्टल हास्पिटल कम्पाउण्ड, मेघानी नगर, अहमदाबाद-380016

(a) To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at O-20, New Metal Hospital Compound, Meghani Nagar, Ahmedabad : 380 016. 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. Registrar 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 आदेश के लिए फीस का भुगतान उपर्युक्त ढंग से किया जाना चाहिए इस तथ्य के होते हुए भी कि लिखा पढी कार्य से बचने के लिए यथास्थिति अपीलीय न्यायाधिकरण को एक अपील या केन्द्रीय सरकार को एक आवेदन किया जाता है।

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 notwithstanding the fact that the one appeal to the Appellate 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 शुल्क अधिनियम 1970 यथा संशोधित की अनुसूची-1 के अंतर्गत निर्धारित किए अनुसार उक्त आवेदन या मूल आदेश यथास्थिति निर्णयन प्राधिकारी के आदेश में से प्रत्येक की एक प्रति पर रु.6.50 पैसे का न्यायालय 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.

- (6) सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट), के प्रति अपील के मामले में कर्तव्य मांग (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 सेवा कर के अंतर्गत, शामिल होगा "कर्तव्य की मांग" (Duty Demanded) -

- (i) (Section) खंड 11D के तहत निर्धारित राशि;
- (ii) लिया गलत सेनवैट क्रेडिट की राशि;
- (iii) 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:

- (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.

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

This departmental appeal has been filed against OIO No. 04/Ref/ST/DC/2016-17 dated 8.4.2016 by the Assistant Commissioner, Service Tax Division, Gandhinagar [for short – 'the appellant'] in terms of authorization issued to him vide Review Order No. 1/2016-17 dated 5.7.2016, by the Commissioner, Central Excise, Ahmedabad-III. The impugned OIO was issued by the Deputy Commissioner, Service Tax Division, Gandhinagar Division [for short – 'adjudicating authority']. M/s. Banaskantha District Co-op. Milk Producers Union Limited, Banas Dairy, Post Box No. 20, Palanpur, Banaskantha, Gujarat – 385 001, is the respondent in the present case.

2. Briefly stated the facts are that the respondent filed a refund claim before the adjudicating authority, who after following the due process, sanctioned refund of Rs. 25,31,473/- vide the aforementioned OIO. Commissioner, Central Excise, Ahmedabad-III. vide his aforementioned review order dated 5.7.2016, directed the appellant to file this appeal on the grounds that the refund of Rs. 16,92,555/-, granted to the respondent vide the impugned OIO, was wrongly sanctioned, as the amount related to transport of 'Banas Dan' i.e. cattle feed; that the refund was sanctioned by holding 'Banas Dan' to be foodstuff. which was exempted from payment of service tax under GTA vide notification No. 25/2012-ST as amended vide notification No. 3/2013-ST dated 1.3.2013. The principle grounds, raised in the departmental appeal are:

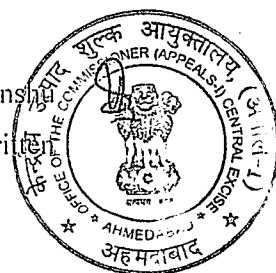
[a] that as per entry no. 21(d) amended vide notification No. 3/2013-ST dated 1.3.2013, foodstuff including tea, coffee, jiggery, sugar, milk and edible oil, excluding alcoholic beverages were exempted from payment of service tax on GTA; that the exemption is for goods which are fit to be consumed by human beings only; that since 'Banas Dan' is a cattle feed, it cannot be considered as foodstuff;

[b] that the mega notification no. 25/2012-ST which was amended vide notification no. 3/2013-ST, provides exemption to goods consumed by humans: that whenever it was felt necessary to give exemption to the goods or services meant for cattle, it was specifically mentioned; that there is no such mention in entry no. 21(d); that undoubtedly the entry covers only foodstuff fit to be consumed by the human beings;

[c] that the adjudicating authority incorrectly interpreted the meaning of the word foodstuff for both human as well as for cattle on the grounds that the term food stuff is neither defined under the Finance Act, 1994 or the rules framed thereunder nor under the Central Excise Act, 1944;

[d] that the reliance on the case law of Sat Pal Gupta and Others [1982 AIR 798] is not proper since the judgement was pronounced in the year 1982 before the enactment of the Finance Act and that the judgement was with regard to Essential Commodities Act.

3. Personal hearing in the matter was held on 17.5.2017 and Shri Sudhanshu Bissa, Advocate appeared on behalf of the respondent and reiterated the reply and written



submissions of the respondent. The main averments raised in the reply and written submissions were:

- (a) that the grounds raised in the departmental appeal have already been considered and findings given by the adjudicating authority before sanctioning the refund claim;
- (b) that the notification nowhere mentions that it would not cover items consumed by cattle; that in other words if the legislature intended to exclude food for animals from the purview of foodstuff, then it would specifically mention excluding food for animals;
- (c) that in order to give a broader meaning the legislature has made a deliberate omission by not specifying whether foodstuff is restricted to human consumption or not; that the word foodstuff has to be interpreted in a broader sense to include any kind of food stuff whether it is for animals or for human consumption;
- (d) that the revenue was not authorized to consider other entries appearing in the general exemption notification while deciding the true scope of notification, *ibid*; that since the entry does not specifically provide that foodstuff would mean something for human consumption only, the grounds raised in the appeal are absolutely without any basis;
- (e) that according to meanings given by various reputed dictionaries it is clear that anything that is edible is to be considered as food stuff and it does not matter whether it is to be consumed by humans or animals; that Banas Dan is an edible substance used as food for animals.

4. I have gone through the facts of the case, the grounds in the Review order and the reply and written submissions filed by the respondent. The primary issue to be decided is whether the refund of Rs. 16,92,555/-, sanctioned to the respondent vide the impugned OIO is erroneous or otherwise.

5. To put the matter in perspective, the facts are that the respondent filed a refund claim of Rs. 35,03,226/-. The adjudicating authority consequent to examining the refund claim, issued a query memo. Thereafter, the adjudicating authority sanctioned refund of Rs. 25,31,473/- to the respondent which included refund of service tax paid in respect of Good Transport Agency, Legal Consultancy and Rent a cab service. The Review order is only disputing the sanction of refund of Rs. 16,92,555/-, sanctioned under GTA for transport of 'Banas Dan'.

6. As per the impugned OIO, the respondent under Rule 2(1(d) (III) of the Service Tax Rules, 1994, was liable to pay Service Tax under Goods Transport Agency Service on inward as well as outward transportation in terms of it being a cooperative society. However, vide notification No. 25/2012-ST dated 20.6.2012 amended vide notification no. 3/2013-ST dated 1.3.2013 w.e.f. 1.4.2013, [entry no. 21(d)], *foodstuff including flours, tea, coffee, jiggery, sugar, milk products, salt and edible oil, excluding alcoholic beverages are exempted from payment of Service Tax*; that since the respondent had already paid service tax of Rs. 16,92,555/- on transportation of Banas Dan [cattlefeed], the adjudicating authority sanctioned the refund after examining the claim on limitation and unjust enrichment. The adjudicating authority held that Banas Dan [a cattle feed], was a foodstuff



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by relying on the case law of *Sat Pal Gupta and Others v/s State of Haryana* [1982 AIR 798, 1982 SCR(3) 196].

7. The primary ground taken by the Revenue for holding that the refund was wrongly sanctioned is that 'Banas Dan', a cattle feed is not foodstuff. Since the dispute hinges on whether Banas Dan is foodstuff or otherwise, I would first like to decide this issue. It is a matter of fact that foodstuff is not defined in the Finance Act, 1994 or in the Central Excise Act, 1944. However, what foodstuff is has been deliberated upon by the Supreme Court in a series of judgements.

8. Hon'ble Justice Vivian Bose of the Supreme Court of India, in the case of *Virkumar Gulabchand Shah* [1952 AIR 335, 1952 SCR 877], while deciding the dispute as to whether turmeric is a "foodstuff" within the meaning of clause 3 of the Spices (Forward Contracts Prohibition) Order, 1944, read with section 2 (a) of the Essential Supplies (Temporary Powers) Act, 1946, (Act XXIV of 1946), held as follows [relevant extracts]:

*Much learned judicial thought has been expended upon this problem--what is and what is not food and what is and what is not a foodstuff; and the only conclusion I can draw from a careful consideration of all the available material is that the term "foodstuff" is ambiguous. In one sense it has a narrow meaning and is limited to articles which are eaten as food for purposes of nutrition and nourishment and so would exclude condiments and spices such as yeast, salt, pepper, baking powder and turmeric. In a wider sense, it includes everything that goes into the preparation of food proper (as understood in the narrow sense) to make it more palatable and digestible. In my opinion, the problem posed cannot be answered in the abstract and must be viewed in relation to its background and context. But before I dilate on this, I will examine the dictionary meaning of the words.*

*The Oxford English Dictionary defines "foodstuff" as follows:*

*"that which is taken into the system to maintain life and growth and to supply waste of tissue."*

*In Webster's International Dictionary "food" is defined as:*

*"nutritive material absorbed or taken into the body of an organism which serves for purposes growth, work or repair and for the maintenance of the vital processes."*

*Then follows this explanation:*

*"Animals differ greatly from plants in their nutritive processes and require in addition to certain inorganic substances (water, salts etc.) and organic substances of unknown composition (vitamins) not ordinarily classed as foods (though absolutely indispensable to life and contained in greater or less quantities in the substances eaten) complex organic substances which fall into three principal groups, Proteins, Carbohydrates and Fats. Next is given a special definition for legal purposes, namely—*

*"As used in laws prohibiting adulteration etc., 'food' is generally held to mean any article used as food or drink by man, whether simple, mixed or compound, including adjuncts such as condiments etc., and often excluding drugs and natural water."*

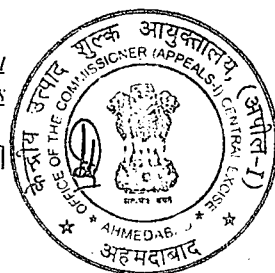
*The definition given of "foodstuff" is*

*1. Anything used as food.*

*2. Any substance of food value as protein, fat etc. entering into the composition of a food."*

*It will be seen from these definitions that "foodstuff" has no special meaning of its own. It merely carries us back to the definition of "food" because "foodstuff" is anything which is used as "food".*

[emphasis added]



9. The Hon'ble Apex Court, thereafter in the case of S. Samuel. M.D.. Harrison Malayalam & ANR [Appeal (civil) No. 12746-12747 of 1996], once again deliberated on the term "foodstuff" while deciding the issue as to whether 'tea' can be included within the meaning of 'foodstuffs' listed under sub-clause (v) of clause (a) of Section 2 of the Essential Commodities Act, 1955, wherein it was held as follows:

*We would first examine whether 'tea' is a 'foodstuff' The term 'foodstuff' (including edible oilseeds and oils) is not defined by the EC Act. Resort shall have to be had to the meaning of the term 'foodstuff' in common parlance, in the commercial world and amongst the consumers-where tea is sold, purchased and consumed. 'Food stuffs' and 'tea' are commonly sold and bought in the market and are consumer items. We will have to see whether 'tea' is considered a 'foodstuff' in the market frequented by its dealers and consumers.*

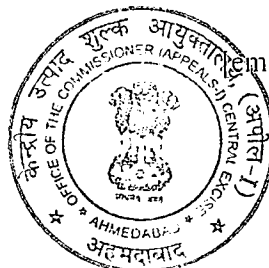
*Let us first have the opinion of lexicographers. "When a word is not defined in the Act itself, it is permissible to refer to dictionaries to find out the general sense in which that word is understood in common parlance. However, in selecting one out of the various meanings of a word, regard must always be had to the context as it is a fundamental rule that 'the meaning of words and expressions used in an Act must take their colour from the context in which they appear'." (Principles of Statutory Interpretation by Justice G.P. Singh, Eighth Edition, 2001, page 279). 'Foodstuff', according to the Chambers Dictionary means a substance used as food, according to Words and Phrases, Permanent Edition (Vol. 17 page 313) 'foodstuffs' means food which has been subjected to "canning" or similar "preparation". The New Oxford Encyclopaedic Dictionary defines 'foodstuff' as material for food and 'foodstuffs' as articles of food in bulk. So, we should proceed to ascertain what 'food' is.*

*As per Words and Phrases (Permanent Edition, Vol. 17, at page 306) 'food', in the general sense of the term, is that which is eaten or drunk for nourishment. It is a nutritive material taken into the body for the purpose of growth, repair or maintenance; that which is eaten or drunk for nourishment; whatever supplies nourishment to organic bodies. It is a general term applicable to all that is eaten for the nourishment, any substance that is taken in the body which serves, through organic action, to build-up normal structure or supply the waste of tissue, and includes confectionery.*

10. It is in this background that I would now like to rely on the judgement of the Hon'ble Supreme Court of India, in the case of Sat Pal Gupta and Others [1982 AIR 798] [which has been relied upon also by the adjudicating authority], wherein the Court held as follows :

*Any stuff which is commonly used as food by the generality of living beings is foodstuff : it is not legitimate to restrict the meaning of that word to things which are used as food by human beings. The animal kingdom is not any the less important in the cosmic scheme than the human empire and it is a distortion to say that it is a matter of little or no concern to the State whether the cattle and the poultry get their due ration of the means of their subsistence. Cattle feed and poultry feed are food to the cattle and the poultry, and therefore they are foodstuffs.*

*The word 'foodstuffs' which occurs in clause (v) of Section 2(a) is not defined in the Act and therefore it must receive its ordinary and natural meaning, that is to say, a meaning which takes account of and accords with the day-to-day affairs of life. Cattle and poultry are living components of the natural environment and there is no reason to exclude that which they eat or feed upon, from the meaning of the word 'foodstuffs', if, what the human beings eat is food, so is what the other living beings eat.*



[emphasis supplied]

9

11. Hence, it is amply clear that foodstuff includes cattle feed. The contention raised by Revenue that the said judgement was pronounced in 1982 well before the enactment of the Finance Act 1994, is not a tenable ground. Further, the other contention raised as far as reliance of the adjudicating authority on the judgement is concerned is that the judgement pertains to Essential Commodities Act. It is a fact that the judgement pertains to Essential Commodities Act. However, while expounding a term which is not defined in the Act, and when the Hon'ble Apex Court has deliberated and arrived at the meaning of the term, it would be an exercise in futility to search for its meaning elsewhere. In-fact the Supreme Court has very categorically held that cattle feed and poultry feed are food to the cattle and the poultry, and therefore they are foodstuffs. The settles the primary ground raised by the Revenue in its departmental appeal.

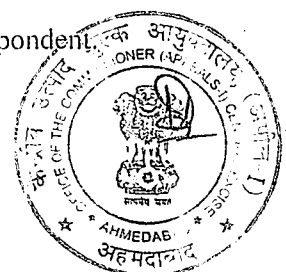
12. The other contention, raised by the Revenue is that the notification in question. *ibid*, talks about foodstuff, consumed by humans. Entry No. 21(d) states as follows :

*(d) foodstuff including flours, tea, coffee, jiggery, sugar, milk products, salt and edible oil, excluding alcoholic beverages;*

At best this contention of Revenue can be termed as an assumption, without any support or backing. The claim of Revenue is that had it been the intention of the Government, it would have specifically included cattle feed when talking about foodstuff in entry no. 21(d). The contention does not appear to be correct because the Government while drafting entry no. 21(d) specifically included tea, to overcome the judgement of the Apex Court in the case of S. Samuel. M.D., Harrisons Malayalam & ANR. *ibid*, wherein the Court concluded that:

*Tea or its beverage does not go into the preparation of any foodstuff. In common parlance, any one who has taken tea would not say that he has taken or eaten food. Thus, 'tea' is not 'food'. It is not understood as 'food' or 'foodstuff' either in common parlance or by the opinion of Lexicographers.*

Surely, the Government while drafting entry no. 21(d), *supra*, was aware of the fact that the Hon'ble Supreme Court in the case of Sat Pal Gupta and Others, had held that cattle feed is a foodstuff and if the intention was to not accord the benefit, would surely have put cattle feed in the exclusion category, when entry no. 21(d) already had an exclusion category. With cattle feed not finding a mention in the exclusion category, I am in agreement with the view taken by the adjudicating authority. Therefore, I do not agree with the contention raised in the departmental appeal that the refund was wrongly sanctioned to the respondent.



13. In view of the foregoing, the departmental appeal is rejected.

14. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।  
14. The appeal filed by the appellant stands disposed of in above terms.

*उमा शंकर*

(उमा शंकर)

आयुक्त (अपील्स - I)

Date : 10.07.2017

Attested

*Vinod*  
(Vinod Lukose)  
Superintendent (Appeal-I),  
Central Excise,  
Ahmedabad.

By RPAD.

To,  
M/s. Banaskantha District Co-op. Milk Producers Union Limited,  
Banar Dairy, Post Box No. 20,  
Palanpur,  
Banaskantha,  
Gujarat - 385 001

Copy to:-

1. The Chief Commissioner, Central Excise, Ahmedabad Zone .
2. The Commissioner, Central Excise, Ahmedabad-III.
3. The Deputy/Assistant Commissioner, Service Tax Division. Gandhinagar. Ahmedabad-III.
4. The Additional Commissioner, System. Central Excise. Ahmedabad-III.
5. Guard File.
6. P.A.

