केंद्रीय कर आयुक्त (अपील)

Near Polytechnic

Ambavadi, Alimedabad=3800

2067.1020

O/O THE COMMISSIONER (APPEALS), CENTRAL TAX,

- _{गजयते} केंद्रीयः उत्त्पदि शुल्क भव्दत सातवी सजिल, पोलिटेकनिक के पास
- आस्वावाडी, अहमदाबाद-38001!

<u>रजिस्टर डाक ए.डी.दारा</u>

फाइल संख्या (File No.) : V2(STC)10 /North/Appeals/ 2017-18

क फाइल संख्या (File No.): V2(STC)10/Hondrigpedia: 2007 ख अपील आदेश संख्या (Order-In-Appeal No.): <u>AHM-EXCUS-002-APP- 365-17-18</u>

दिनांक (Date): <u>15-Mar-2018</u> जारी करने की तारीख (Date of issue): श्री उमा शंकर, आयुक्त (अपील-II) द्वारा पारित Passed by Shri Uma Shanker , Commissioner (Appeals)

ग ______ आयुक्त, केंद्रीय उत्पाद शुल्क, (मंडल-IV), अहमदाबाद उत्तर, आयुक्तालय द्वारा जारी मूल आदेश सं ______ दिनांक _____ से सृजित

Arising out of Order-In-Original No <u>SD-04/Ref/14/AK/17-18</u> Dated: <u>23/05/2017</u> issued by: Assistant Commissioner Central Excise (Div-IV), Ahmedabad North

घ अपीलकर्ता/प्रतिवादी का नाम एवम पता (Name & Address of the Appellant/Respordent)

M/s Kanhai foods Pvt. Ltd

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 an 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) (क) (i) केंद्रीय उत्पाद शुल्क अधिनियम 1994 की धरा अतत नीचे बताए गए मामलों के बारे में पूर्वोक्त धारा को उप-धारा के प्रथम परंतुक 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 |

A revision application lies to the Under Secretary, to the Government of India, Revision Application Unit, Ministry of Finance, Department of Revenue, 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi-110001, 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 हानि कारखाने से किसी भंडारगार या अन्य कारखाने में या किसी भंडारगार से दूसरे भंडारगार में माल ले जाते हुए मार्ग में, या किसी भंडारगार या भंडार में चाहे वह किसी कारखाने में या किसी भंडारगार में हो माल की प्रकिया के दौरान हुई हो |

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

(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 मामले में जो भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातिन है ।

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(c) In case of goods exported outside India export to Nepal or Bhutan, without payment of duty.

अंतिम्र उत्पादन की उत्पादन शुल्क के भुगतान के लिए जो डयूटी केडिट 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 (न.2) 1998 धारा 109 द्वारा नियुक्त किए गए हो।

- (c) 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 दिनाँक 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 रूपये या उससे कम हो तो रूपये 200/- फीस भुगतान की जाए और जहाँ सलग्न रकम एक लाख से ज्यादा हो तो 1000/- की फीस भुगतान की जाए।

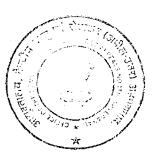
The revision application shall be accompanied by a fee of Rs.200/- where the amount involved is Rupees One Lac or less and Rs.1,000/- where the amount involved is more than Rupees One Lac.

सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपीलः--Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

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

Under Section 35B/ 35E of CEA, 1944 an appeal lies to :-

- (क) वर्गीकरण मूल्यांकन से संबंधित सभी मामले सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधेकरण की विशेष पीठिका वेस्ट ब्लॉक नं. 3. आर. के. पुरम, नई दिल्ली को एवं
- (a) the special bench of Custom, Excise & Service Tax Appellate Tribunal of West Block No.2, R.K. Puram, New Delhi-1 in all matters relating to classification valuation and.
- (ख) लक्तलिखित परिच्छेद २ (1) क में बताए अनुसार के अलावा की अपील, अपीलो के मामले में सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण <u>(सिस्टेट)</u> की पश्चिम क्षेत्रीय पीठिका, अहमदाबाद में ओ–20, न्यू मैन्टल हास्पिटल कम्पाउण्ड, मेघाणी नगर, अहमदाबाद–380016.
- (b) 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.
- (2) केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001 की धारा 6 के अंतर्गत प्रपन्न इ.ए–3 में निर्धारित किए अनुसार अपीलीय न्यायाधिकरणें की गई अपील के विरुद्ध अपील किए गए आदेश की चार प्रतियाँ सहित जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग ओर लगायां गया जुर्माना रूपए 5 लाख या उससे कम है वहां रूपए 1000/– फीस भेजनी होगी। जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग ओर लगाया गया जुर्माना रूपए 5 लाख या 50 लाख तक हो तो रूपए 5000/– फीस भेजनी होगी। जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग ओर लगाया गया जुर्माना रूपए 50 लाख या उससे ज्यादा है वहां रूपए 10000/– फीस भेजनी होगी। की फीस सहायक रजिस्टार के नाम से



रेखाकित बैंक ड्राफ्ट के रूप में संबंध की जाये। यह ड्राफ्ट उस स्थाने के किसी नामित सार्वजनिक क्षेत्र के बैंक की शाखा का हो जहाँ उक्त न्यायाधिकरण की पीठ स्थित है।

Section and the

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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. Registar 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.

यदि इस आदेश में कई मूल आदेशों का समावेश होता है तो प्रत्येक मूल ओदश 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 (3)न्यायाधिकरण को एक अपील या केन्द्रीय सरकार को एक आवेदन किया जाता हैं।

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 not withstanding the fact that the one appeal to the Appellant 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.

न्यायालय शुल्क अधिनियम 1970 यथा संशोधित की अनुसूचि–1 के अंतर्गत निर्धारित किए अनुसार उक्त आवेदन या मूल आदेश यथांस्थिति निर्णयन प्राधिकारी के आदेश में से प्रत्येक की एक प्रति पर रू.6.50 पैसे का न्यायालय शुल्क (4) टिंकट 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.

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। (5)

Attention in invited to the rules covering these and other related matter contended in the Customs, Excise & Service Tax Appellate Tribunal (Procedure) Rules, 1982.

सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण <u>(सिस्टेट)</u>, के प्रति अपीलो के मामले में कर्तव्य मांग (Demand) एवं दंड (Penalty) का 10% पूर्व जमा कर्रना अनिवार्य है। हालांकि, अधिकतम पूर्व जमा 10 करोड़ (6) 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) -

(Section) खंड 11D के तहत निर्धारित राशि; (i)

लिया गलत सेनवैट क्रेडिट की राशि; (ii)

सेनवैट क्रेडिट नियमों के नियम 6 के तहत देय राशि. (iii)

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. 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:

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

इस सन्दर्भ 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।

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 alono is in dienute "

ORDER IN APPEAL

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V2(STC)10/NCRTH/APPEALS/2017-18

M/s Kanhai Foods Pvt. Ltd., Sub-plot No. 4, Block No. 329, Sarkhej Bavla Road, Changodar- Ahmedabad- 382 210 (STR AAAC K6293N ST001) (hereinafter referred to as 'appellants') have filed the present appeals against the Order-in-Original No. SD-04/REF-14/AK/2017-18 deted 23.05.2017 (hereinafter referred to as 'impugned orders') passed by the Asst. Commissioner, Service Tax, Div-IV, APM Building, Ahmedabad (hereinafter referred to as 'adjudicating authority').

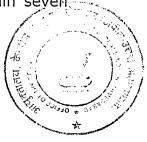
2. The facts of the case, in brief are that appellant have filed refund claim of Rs. 5,85,032/- on 04.05.2017 on ground that they have paid service tax wrongly for the year 2016-17 because service has been rendered by individual transport operators and not by goods transport agency (GTA).

3. Adjudicating authority held that appellant being Body Corporate is "specified person" and has paid the freight to, therefore appellant is liable to pay service tax in terms of Rule 2(1)(d)(i)(B) and Rule 2(1)(d)(v) of STR, 1994 under reverse charge mechanism, even though service provider is individual truck operator. Whole claim was rejected by impugned OIO.

4. Being aggrieved with the impugned order, the appellants preferred an appeal on 20.07.2017 before the Commissioner (Appeals), CGST, Ambawadi, Ahmadabad wherein it is contended that-

- Service, as defined u/s 66D(p) of FA, 1994, is covered in Negative list as per section 66D of FA, 1994. Individual owner are not under any obligation to issue consignment
- ii. Service provider are not GTA as defined in section 65B(26) and they are not issuing consignment note as per rule 4B of STR,1994.
- iii. Service tax liability under reverse charge basis for body corporate arises only, when the services are provided by the person in nature of GTA. Appellants are not receiving services from GTA, therefore they are not liable to pay service tax.

5. Personal hearing in the case was granted on23.01.2017. Shree Sandesh Mundra, Accountant of appellant appeared before me and reiterated the grounds of appeal. He stated that delivery challans to be submitted along with the invoices raised by truck owners within seven days, citation and summary submitted.



DISUSSION AND FINDINGS

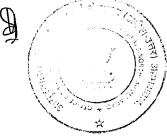
6. I have carefully gone through the facts of the case on records, grounds of appeal in the Appeal Memorandum and oral/written submissions made by the appellants, evidences produced at the time of personal hearing and delivery challan/ citations submitted after hearing.

7. It would be pertinent to note that Clause (p) of Section 66D (Negative List) specifies transportation of goods by road except when provided by GTA as a Non-Taxable service. It means that only service provided by GTA is taxable. Now the question arises as to what technically is a Goods Transport Agency. Goods Transport Agency as defined u/s 65B(26) of Finance Act,1994 introduced with effect from 01-07-2012

8. I find that negative list covers services provided of transportation of goods by road except when provided by GTA and Courier agency. Individual truck owners who does not issue consignment note and engaged in transportation of goods could be said to be operating as Goods Transport Operator and could claim benefit of Negative List.

9.1 If individual truck owner or person takes truck on hire to provide transportation of goods service and receives freight directly from consignor/ consignee would not issue consignment note. In such case he would not liable to pay service tax. Hence, service of transport booking agents would be subject to tax and truck owner or truck operator would not be subject to tax under GTA service. The service is taxable under the head, Goods Transport Agency but only that services which provided by agent is taxable and not by truck owners. Service provided by truck owners is completely exempted whether they rent or transport the goods on their own. I agree with the arguments raised by appellant at para 4(i), 4(ii) and para 4(iii) above.

9.2 The CESTAT has held that transportation services provided by individual truck owners and lorry owners are not liable to service tax as a 'Goods Transport Agency' service. K.M.B. Granites Pvt. Ltd. v CCE (2010) 19 STR 437 (Chennai) and Subramanyasiva Sugar Mills Ltd. v CCE [2010-TIOL-1061-CESTAT-MAD].



V2(STC)10/NORTH/APPEALS/2017-18

10. Appellants have produced the delivery challans and payment voucher to substantiate that payment has been given to individual. But no evidence has been produced before me to substantiate that said individuals were owner of the truck or they were operating truck on hire bases. This factual aspect needs to verify before extending benefits for which the case needs to be remanded back to original adjudicating authority.

11. In view of facts and discussion herein above, the Adjudicating Authority is directed to yerify as stated above, for which case is remanded back to the Adjudicating Authority, 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. 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. 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).

12. In view of above, appeal filed by the appellants is allowed by way of remand.

13. अपीलकर्ता द्वारा दर्ज की गई अपीलों का निपटारा उपरोक्त तरीके से किया जाता है।

13. The appeals filed by the appellant stand disposed off in above terms.

(उमा शंकर) केन्द्रीय कर आयुक्त (अपील्स)

ATTESTED (R.R. RATEL)

SUPERINTENDENT (APPEAL),

CENTRAL TAX, AHMEDABAD



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M/s Kanhai Foods Pvt. Ltd., Sub-plot No. 4, Block No. 329, Sarkhej Bavla Road, Changodar-Ahmedabad- 382 210

Copy to:

1) The Chief Commissioner, Central Tax, Ahmedabad North .

2) The Commissioner Central Tax, CGST, Ahmedabad North.

3) The Asst. Commissioner, Central Tax, Div-IV, Ahmedabad North

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4) The Asst. Commissioner(System), Hq, Ahmedabad North.

5) Guard File.

6) P.A. File.



