

	केंद्रीय कर आयुक्त (अपील)	
सत्यमेव जयते	O/O THE COMMISSIONER (APPEALS), CENTRAL TAX, केंद्रीय उत्पाद शुल्क भवन, सातवीं मंजिल, पोलिटेक्निक के पास, आम्बावाडी, अहमदाबाद-380015	7th Floor, Central Excise Building, Near Polytechnic, Ambavadi, Ahmedabad-380015
 079-26305065		टेलिफैक्स : 079-26305136

रजिस्टर डाक ए.डी. द्वारा

क फाइल संख्या (File No.): V2(STC)99 /North/Appeals/ 2017-18 | 3085-89.
 ख अपील आदेश संख्या (Order-In-Appeal No.): AHM-EXCUS-002-APP-417-17-18
 दिनांक (Date): 3/28/2018 जारी करने की तारीख (Date of issue): 15/05/18
 श्री उमा शंकर, आयुक्त (अपील) द्वारा पारित
 Passed by **Shri Uma Shanker**, Commissioner (Appeals)

ग _____ आयुक्त, केंद्रीय उत्पाद शुल्क, (मंडल-VII), अहमदाबाद उत्तर, आयुक्तालय द्वारा जारी

मूल आदेश सं _____ दिनांक _____ से सृजित
 Arising out of Order-In-Original No DC-007-17-18 Dated: 15/01/2018
 issued by: Deputy Commissioner Central Excise (Div-VII), Ahmedabad North

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

M/s Gatistvam Cargo Care

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 निर्यातित है।



Cont...2

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 फॉर्म 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 34फ के अंतर्गत वित्तीय(संख्या-2) अधिनियम 2014(2014) की संख्या 29) दिनांक: 06.08.2014 जो की वित्तीय अधिनियम, 1984 की धारा 23 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 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 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,

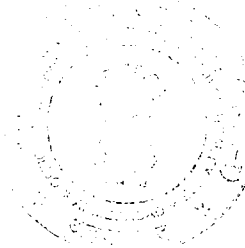
Under Central Excise and Service Tax, "Duty demanded" shall include:

- (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.



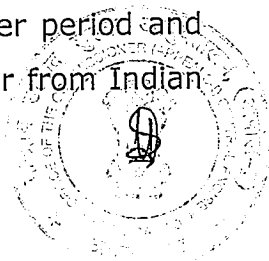
O R D E R - I N - A P P E A L

M/s Gatistvam Cargo Care, Himadri-I, 302, Ashram Road, Near Toran Dining Hall, Ahmedabad-380009 (henceforth, "*appellants*") have filed the appeal against the Order-in-Original No. CGST/A'bad-North/Div-VII/S.TAX-DC-007-17-18 dated 15.01.2018 (henceforth, "*impugned order*") passed by the Dy. Commissioner of GST, Division-VII, Ahmedabad (henceforth, "*adjudicating authority*").

2. Briefly stated, the facts of the case are that a show cause notice, based on departmental audit, was issued to the appellant on 14.10.2016 for recovery of service tax of Rs. 30,16,668/- by invoking extended time availed by the appellants during the period 2011-12 to June, 2012 not paid by them on the services rendered by them which were sought to be classified and considered as taxable services falling under the category of Business Support Service as defined under Section 65 of the Finance Act, 1994 (for short the 'Act'). The service tax was sought to be demanded on the ground that they had categorized ocean freight, wharfage charges etc. recovered from the clients as non-taxable and others being taxable. They had not paid service tax on the ocean freight, wharfage charges etc. Their main activity was that of facilitating booking of freight/space on ocean going vessels. The adjudicating authority noted that the appellants had provided support services of business or commerce as defined in Section 65 (104c) of the Act as it included a particular activity "managing distribution and logistics. The appellants had artificially split the consideration into taxable and non-taxable portion. The adjudicating authority, vide the impugned order, confirmed the demand of service tax and ordered recovery of the confirmed demand of service tax along with interest. Equal penalty was also imposed under Section 78 of the Act and a penalty of Rs. 10,000/- under Section 77 of the Act.

3. Being aggrieved by the impugned order, the appellants have filed this appeal on the following grounds:

- a) That they are engaged in pure trading of space in the ocean going vessel and aircrafts which is known as freight booking and they sell the space to the exporter on margin;
- b) That when the ocean freight income was held as non-taxable for the period prior from 2004-05 to 2007-08 as is evident from the earlier audit reports, how can service tax be demanded for later period and period post June, 2012, the transportation by sea and air from Indian



customs station upto the foreign destination is in negative list and therefore no service tax is payable;

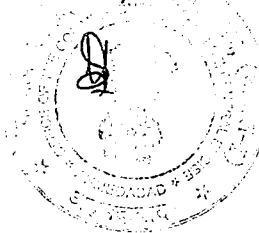
- c) That ocean freight is not appearing under any of the clauses of Section 65 of the Act and ocean freight is not defined as taxable service;
- d) That the appellant is not end to end logistic solution provider to the exporter and not a transport or logistic company;
- e) That the adjudicating authority has attempted to bring the selling of space (ocean and air) and other services provided by the appellant by treating the whole activity as "end to end logistic service" and therefore classified under business support service which is not correct;
- f) That they have undertaken two different activities, one of clearing and forwarding service and another of trading in cargo space;
- g) That they rely on the case laws of Bax Global India Ltd. vs. CST - 2008 (9) STR-412 (Tri.Bang.), Gudwin Logistics vs. CCE - 2010 (18) STR-348 (Tri.Ahd.), APL Logistics (India) Pvt. Ltd. - 2014 (36) STR-1310 (Tri.Chen.)
- h) That the charge of suppression of facts is not correct as they had shown the full details in their returns and audit was undertaken by the department earlier;
- i) That since there is no suppression of facts involved; no penalty under Section 78 of the Act can be imposed.

4. The personal hearing in the case was held on 21.02.2018 in which Shri M.A Patel, authorized representative appeared on behalf of the appellants. He reiterated the grounds of appeal. He submitted that no demand before April, 2011 and after July, 2012 and cites various decisions in favour of the appellants. He defended his case on limitation and on the issue that in earlier audit, ocean freight was considered as non-taxable.

5. I have carefully perused the documents pertaining to the case and submitted by the appellants along with the appeal. I have considered the arguments made by the appellants in their appeal memorandum as well as oral submissions and additional written submissions submitted during personal hearing.

6. I find that the said service as detailed in the show cause notice as per Section 65 (104c) is as under:

""support Services of Business or commerce" means services provided in relation to business or commerce and includes evaluation of prospective customers, telemarketing, processing of purchase orders and fulfillment services, information and



tracking of delivery schedules, managing distribution and logistics, customer relationship management services, accounting and processing of transactions, operational assistance for marketing, formulation of customer service and pricing policies, infrastructural support services and other transaction processing" (emphasis provided)

Now from the plain reading of the section, the important thing is managing distribution and logistics to qualify under this definition. Now all the words highlighted above cannot be read in isolation to each other i.e. one must be engaged in management of distribution and also logistics of the goods being distributed. The word "managing distribution" and the word "logistics" should not be read separately. It is to be read together, which will mean distribution and logistics thereof. While going through the facts narrated in the show cause notice, in para 2.2 it is clearly noted that the appellants were not engaged in transportation of goods in the ocean going vessels which was actually done by the shipping lines but their role was limited to facilitating booking of freight/space on ocean going vessels. In view of these undisputed facts and by reading the underlined part of the definition given above, I find that the appellants are not providing services of managing distribution and logistics together which is a prerequisite to qualify as services defined under Section 65 (105c). I also find support from the case laws, which shows how words and expression which follows, should be interpreted:

MAHARASHTRA FUR FABRICS LTD - 2002 (145) E.L.T. 287 (S.C.) in which it has been held that ;

"Interpretation of statute - General terms following particular expression to take their colour and meaning from preceding expression by applying principles of ejusdem generis"

and further I also quote relevant portion of para 6 of the decision which is as under :

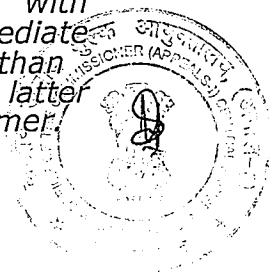
"6.A careful.....It is a well established principle that general terms following particular expressions take their colour and meaning as that of the preceding expressions, applying the principle of ejusdem generis rule, therefore, in construing the words "or any other process", the import of the specific expressions will have to be kept in mind. It follows that the words "or any other process" would have to be understood in the same sense in which the process, including tentering, would be understood. Thus understood, a process akin to stentering/tentering would fall within the meaning of the proviso and, consequently, the benefit of the notification cannot be availed by the respondent."

Hon' ble Apex Court in case of M/S. PARLE AGRO (P) LTD- AIR 2017 SC 2801 has used the maxim "*Noscitur a Sociis*" to explain above situation:

"Justice G.P.Singh in 'Principles of Statutory Interpretation, 14th Edition, has explained the 'noscitur a sociis' in the following words:

"(b)Noscitur a Sociis The rule of construction noscitur a sociis as explained by LORD MACMILLAN means: "The meaning of a word is to be judged by the company it keeps". As stated by the Privy Council:

"It is a legitimate rule of construction to construe words in an Act of Parliament with reference to words found in immediate connection with them". It is a rule wider than the rule of ejusdem generis; rather the latter rule is only an application of the former.

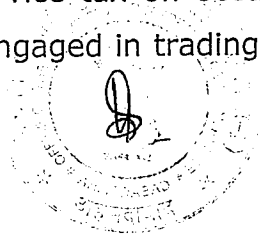


The rule has been lucidly explained by GAJENDERAGADKAR, J., in the following words: "This rule, according to MAXWELL, means that when two or more words which are susceptible of analogous meaning are coupled together, they are understood to be used in their cognate sense. They take as it were their colour from each other, that is, the more general is restricted to a sense analogous to a less general. The same rule is thus interpreted in Words and Phrases."

"Associated words take their meaning from one another under the doctrine of *noscitur a sociis*, the philosophy of which is that the meaning of the doubtful word may be ascertained by reference to the meaning of words associated with it; such doctrine is broader than the maxim *eiusdem generis*." In fact the latter maxim "is only an illustration or specific application of the broader maxim *noscitur a sociis*". It must be borne in mind that *noscitur a sociis*, is merely a rule of construction and it cannot prevail in cases where it is clear that the wider words have been deliberately used in order to make the scope of the defined word correspondingly wider. It is only where the intention of the Legislature in associating wider words with words of narrower significance is doubtful, or otherwise not clear that the present rule of construction can be usefully applied." 41. This Court in *Pardeep Aggarbatti Vs. State of Punjab*, 1997 (96) E.L.T. 219(S.C.), considering Entry 16 of Schedule A of Punjab General Sales Tax Act, 1948, in paragraph 9 has laid down following: "9. Entries in the Schedules of Sales tax and Excise statutes list some articles separately and some articles are grouped together. When they are grouped together, each word in the Entry draws colour from the other words therein. This is the principle of *noscitur a sociis*."

42. Applying the aforesaid principle of construction of '*noscitur a sociis*' on Entry 71, it is clear that clause 5 of Entry 71 has to take colour and meaning from the other items included in Entry 71. Item 5 of Entry 71 uses the words "similar other products not specifically mentioned under any other entry in this list or any other schedule". Thus, the products which are to be covered under Item No.5 are similar other products. When Item No.2 of the Entry 71 that is fruit juice, fruit concentrates, fruit squash, fruit syrup and pulp, and fruit cordial and item No.4 that is health drinks of all varieties, are kept in mind the fruit juice based drink shall fall in Item No.5. Both High Court and Committee of Commissioners overlooked this principle while interpreting item No.5 of Entry 71."

6. The issue to be decided is of liability of service tax on ocean freight which the appellants have claimed that they are engaged in trading of space



for cargo as they purchase the space and sell it to the prospective exporters and the difference in the rate of purchase and sale is their profit or loss as the situation may be. I find that there is no dispute that the appellants are engaged in, among other things, buying and selling of space in the ocean going vessel and aircrafts which is commonly known as freight booking. The Hon'ble Tribunal in the case of Commissioner of Service Tax, New Delhi Vs. Karam Freight Movers - 2017 (4) G.S.T.L. 215 (Tri. - Del.) has held that mere sale and purchase of cargo space and earning profit in process cannot be considered a taxable activity. I fully agree with the conclusion drawn by the Hon'ble Tribunal of Delhi and hold accordingly. This view is further supported by the 2017 (47) S.T.R. 309 (Tri. - Mumbai) in the CESTAT, Mumbai in the case of DHL LEMUIR Logistics Pvt. Ltd. Vs. Commissioner of C. Ex., Thane-I. In this case it has been held that "*Excess reimbursement is true market price paid by consignor to appellant over and above price at which slot was pre-booked by appellant from airline - No commission involved, Appellant does not confirm to definition of BAS, hence, not liable to tax - Section 65(19) of Finance Act, 1994*".

7. I therefore allow the appeal and set aside the impugned order.

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

The appeal filed by the appellant stands disposed of in above terms.

उमा शंकर

(उमा शंकर)

केंद्रीय कर आयुक्त (अपील्स)

अहमदाबाद

दिनांक:

सत्यापित
धर्म उपाध्याय
अधीक्षक (अपील्स),
केंद्रीय कर, अहमदाबाद
By R.P.A.D.

To,

M/s Gatistvam Cargo Care,
Himadri-I, 302,
Ashram Road,
Near Toran Dining Hall,
Ahmedabad-380009

Copy to:

1. The Chief Commissioner of Central Tax, Ahmedabad Zone.
2. The Commissioner of Central Tax, Ahmedabad -North.
3. The Additional Commissioner, Central Tax (System), Ahmedabad (North).
4. The Astt./Dy. Commissioner, Central Tax, Division-VII, Ahmedabad (North).
5. Guard File.
6. P.A.



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