



सत्यमेव जयते

आयुक्त का कार्यालय, (अपीलस)

Office of the Commissioner,

केंद्रीय जीएसटी, अहमदाबाद आयुक्तालय

Central GST, Appeal Commissionerate- Ahmedabad

जीएसटी भवन, राजस्व मार्ग, अम्बावाड़ी अहमदाबाद ३८००१५.

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क फाइल संख्या : File No : **V2(ST)244 /North/Appeals/2018-19 / 10974 to 10978**

ख अपील आदेश संख्या : Order-In-Appeal No.. **AHM-EXCUS-002-APP-32-19-20**

दिनांक Date : **28/05/2019** जारी करने की तारीख Date of Issue **04/06/2019**

श्री उमा शंकर, आयुक्त (अपील) द्वारा पारित

Passed by **Shri Uma Shanker** Commissioner (Appeals)

ग Arising out of Order-in-Original No. **73/Refund/2018** Dated **12/03/2018** Issued by **Assistant Commissioner** , Central GST , Div-IV , Ahmedabad North.

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

M/s Kanhai foods pvt ltd

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:-

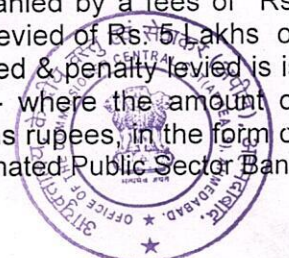
Under Section 86 of the Finance Act 1994 an appeal lies to :-

पश्चिम क्षेत्रीय पीठ सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण ओ. 20, न्यू मेंटल हास्पिटल कम्पाउण्ड, मेधाणी 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 ओर लगाया गया जुर्माना रूपए 5 लाख या उससे कम है वहाँ रूपए 1000/- फीस भेजनी होगी। जहाँ सेवाकर की मांग, ब्याज की मांग ओर लगाया गया जुर्माना रूपए 5 लाख या 50 लाख तक हो तो रूपए 5000/- फीस भेजनी होगी। जहाँ सेवाकर की मांग, ब्याज की मांग ओर 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 accompany ed 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.



(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 **अधीक्षक** 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, 1994 की धारा 34फ 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, 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 अर्जी 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.

रजिस्टर्ड डाक ए.डी. द्वारा

दूरभाष : 26305065



ORDER IN APPEAL

M/s. Kanhai Foods Pvt. Ltd., Sub Plot No. 4, Block No. 329, Sarkhej-Bavla Road, Changodar (*hereinafter referred to as 'the appellants'*) have filed the present appeal against Order-in-Original number 73/REFUND/2018 dated 12.03.2019 (*hereinafter referred to as 'impugned order'*) passed by the Deputy Commissioner, Central GST & Central Excise, Division-IV, Ahmedabad-North (*hereinafter referred to as 'adjudicating authority'*).

2. The facts of the case, in brief, are that the appellants were holding erstwhile Service Tax registration number AAACK6293NST001. The appellants had filed a refund claim of ₹5,85,032/- on 04.05.2017 before the Assistant Commissioner of erstwhile Service Tax, Div-IV, Ahmedabad on the ground that they had wrongly paid Service Tax under the category of GTA service on outward freight expenses paid to individual transport operators. The original adjudicating authority observed that being a body corporate; the appellants were liable to pay Service Tax on freight paid to individual transport operators under Reverse Charge Mechanism. Based on the observation, the original adjudicating authority rejected the entire claim of refund vide O-I-O number SD-04/Ref-14/AK/2017-18 dated 23.05.2017. Being aggrieved, the appellants had filed an appeal before me against the said O-I-O and I, vide O-I-A number AHM-EXCUS-002-APP-365-17-18 dated 15.03.2018, observed that service provided by truck owners is completely exempted and considered that the appellants are eligible for the said refund. However, I found that the appellants did not produce, before me, any evidence to substantiate the fact that the individual service providers were owner of the trucks or otherwise. In view of the above, I remanded back the case directing the adjudicating authority to verify the said observation only. The appellants, accordingly, approached the adjudicating authority and the adjudicating authority, vide the impugned order, once again rejected the entire refund.



3. Being aggrieved with the impugned order the appellants have preferred the present appeal. They stated that non-availability of vehicle number in the documents is a procedural lapse and refund cannot be denied because of this. Further, the appellants contended that the adjudicating authority has rejected the refund on the ground that the nature of payments made to individual truck/tempo owners is not ascertainable. The appellants claimed that they had submitted documents substantiating that they had paid the individuals through legitimate banking channel and those individuals are legitimate owners of their respective vehicles. They further stated that they had submitted registration certificates of tempo/trucks owned by the individuals, before the adjudicating authority and the same has been accepted by the latter.

4. Personal hearing in the matter was granted and held on 08.05.2019. Smt. Pooja Jajwani, Chartered Accountant, appeared before me on behalf of the appellants and reiterated the contents of appeal memo. Smt. Jajwani requested to permit her fifteen days time to submit bank statement along with some additional documents. However, she submitted those documents within two days.

5. I have carefully gone through the facts of the case on records, grounds of appeal in the Appeal Memorandum and oral submissions made by the appellants at the time of personal hearing. I had remanded back the case to the adjudicating authority to verify only one condition i.e. whether the service providers are the owners of the truck/tempo or otherwise. I find that the adjudicating authority has verified the same and confirmed the fact, in paragraph 16 of the impugned order, that the appellants had actually made payments to the individuals who are the owners of the truck/tempo. When the adjudicating authority was confirmed about it, he should have sanctioned the refund as I had, vide the O-I-A number AHM-EXCUS-002-APP-365-17-18 dated 15.03.2018, already shown my satisfaction about the non-taxability of the said service. I would like to quote below the relevant paragraph of my O-I-A for more clarification;



"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 be liable to pay Service Tax. Hence, service of transport booking agents would be subject to tax under GTA service. The service is taxable under the head 'Goods Transport Agency' but only that service which is 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 appellants..... .

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].*"

So, looking to the above, the only task, handed over to the adjudicating authority, was to confirm whether the service providers were the owners of the vehicles or otherwise. The adjudicating authority was supposed to verify the facts and if found in order, he was supposed to sanction the refund. Looking to the impugned order, I found that, in paragraph 16 of the impugned order, the adjudicating authority had verified the fact and confirmed that the appellants had made payments to the owners of the vehicle. However, after that, he went on a fault searching spree forgetting that he cannot travel beyond the scope of the show cause notice issued on 05.05.2017. This is a gross violation of Rules and procedures as laid down by the Board. In the case of *M/s. Jetlite (India) Ltd. vs. CCE, New Delhi*, the CESTAT, West Block, New Delhi very clearly says so which is reproduced below;

"Adjudicating Authority cannot travel beyond SCN; the adjudicating authority did travel beyond the scope of the show cause notice while deciding the matter. The authority below clearly erred in imposing such



liability upon the appellants. Apart from traveling beyond the scope of the show cause notice, undoubtedly, the department has failed to produce any evidence regarding the basic ingredient of Section 65(19)(ii) of the said Act so as to justify classification of whatever activity carried out by the appellants in the form of display of logo being classifiable under the category of business auxiliary service".

The issues should have been raised by the adjudicating authority after issuance of proper show cause notice and offering personal hearing to the appellants. However, same has not been done by the adjudicating authority thus denying the appellants the chance of natural justice. The principles of natural justice must be followed by the authorities at all levels in all proceedings under the Act or Rules and the order passed in violation of the principles of natural justice is liable to be set aside by Appellate Authority. Natural justice is the essence of fair adjudication, deeply rooted in tradition and conscience, to be ranked as fundamental. The purpose of following the principles of natural justice is the prevention of miscarriage of justice. On this ground itself, the impugned order is not sustainable.

6. However, on going through the additional documents submitted by the appellants, I found that the said documents are not self certified by them. Moreover, the list of individual truck owners submitted by them could be verified at the end of the adjudicating authority only. The bank statement, being too much voluminous, needs to be verified from the grass root level for its authenticity. In view of the above, I once again remand back the case to the adjudicating authority **for scrutiny of the above documents only**. The adjudicating authority is directed to restrict himself only around the above verification and not to raise any more new issues without following proper procedures.

7. Therefore, in view of the discussion held above, I remand back the case to the adjudicating authority for verification of the details pertaining to payment made to the individual truck owners vis-à-vis the bank statement.



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

8. The appeal filed by the appellants stands disposed off in above terms.

उमा शंकर

(उमा शंकर)

CENTRAL TAX (Appeals),
AHMEDABAD.



ATTESTED

S. Dutta
31/05/19
(S. DUTTA)

SUPERINTENDENT,

CENTRAL TAX (APPEALS), AHMEDABAD.

To,

M/s. Kanhai Foods Pvt. Ltd.,

Sub Plot No. 4, Block No. 329,

Sarkhej-Bavla Road,

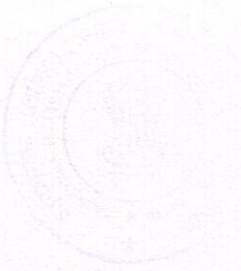
Changodar-382 210.

Copy to:

- 1) The Chief Commissioner, Central Tax, Ahmedabad.
- 2) The Commissioner, Central Tax, Ahmedabad-North.
- 3) The Dy./Asst. Commissioner, Central Tax, Div-IV, Ahmedabad-North.
- 4) The Asst. Commissioner (System), Central Tax, Hq., Ahmedabad-North.

✓ 5) Guard File.

6) P. A. File.



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