

 सत्यमेव जयते	<b>केंद्रीय कर आयुक्त (अपील)</b> <b>O/O THE COMMISSIONER (APPEALS), CENTRAL TAX,</b> केंद्रीय कर भवन, सातवीं मंजिल, पोलिटेकनिक के पास, आम्बावाडी, अहमदाबाद-380015	 7 <sup>th</sup> Floor, GST Building, Near Polytechnic, Ambavadi, Ahmedabad-380015
टेलीफोन : 079-26305065		टेलीफैक्स : 079 - 26305136

रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या : File No : V2(ST)/141/Ahd-I/2017-18  
 Stay Appl.No. NA/2017-18

ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-EXCUS-001-APP-316-2017-18  
 दिनांक Date : 12-02-2018 जारी करने की तारीख Date of Issue 20/2/2018

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

ग Arising out of Order-in-Original No. SD-02/06/AC/2017-18 दिनांक: 01.05.2017 issued by Assistant  
 Commissioner, Central Tax, Ahmedabad-South

घ अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent  
 Crust Food Company  
 Ahmedabad

कोई व्यक्ति इस अपील आदेश से अरातोष 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) केन्द्रीय 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 सधिव. 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 :

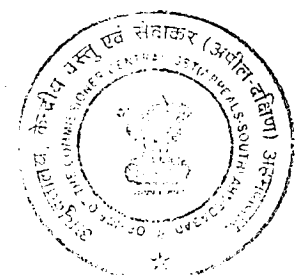
(ii) यदि माल की हानि के मामले में जब ऐसी हानि कारखाने से किसी भण्डागार या अन्य कारखाने में या किसी भण्डागार से दूसरे  
 भण्डागार में माल ले जाते हुए मार्ग में, या किसी भण्डागार या भण्डार में चाहे वह किसी कारखाने में या किसी भण्डागार में हो माल की प्रक्रिया के  
 दौरान हुई हो।

(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 गलत 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 ग्रास 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.

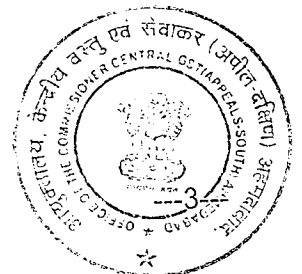
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील:-  
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(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, अपील के मामले में सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेड) की पश्चिम क्षेत्रीय पीठिका, अहमदाबाद में ओ-20, न्यू मेटल हॉस्पिटल 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.





ORDER IN APPEAL

This appeal has been filed by M/s. Crust Food Company HUF Rohit R Khanna, FF/101, Shilp Square B, Opp. Himalaya Mall, Drive in Road, Bodakdev, Ahmedabad [for short - 'appellant'] against OIO No. SD-02/06/AC/2017-18 dated 1.5.2017 passed by the Assistant Commissioner, Division II, Service Tax Commissionerate, Ahmedabad [for short - 'adjudicating authority'].

2. Briefly, based on intelligence, a preventive case was booked and thereafter a show cause notice dated 8.5.2017 was issued to the appellant demanding service tax of Rs. 18.34 lacs in respect of incomes shown under various heads which were falling under the ambit of Restaurant services, Event Management services, Business Auxiliary Services and Renting of immovable property service. This notice was adjudicated vide the impugned OIO dated 1.5.2017, wherein the adjudicating authority confirmed the demand along with interest and further imposed penalty under sections 77 and 78 of the Finance Act, 1994.

3. Feeling aggrieved, the appellant has filed this appeal raising the following averments:

- that the last letter of personal hearing dated 22.3.2017 was never received by the appellant and therefore the impugned order is an ex parte order and should be struck down for violating the principles of natural justice;
- that the order has been passed without considering the entitlement of value based exemption; that the liability quantified for 2011-12 is Rs. 3,31,954/- of which the appellant is entitled to exemption to deduct value of taxable service to the extent of Rs. 10 lacs;
- that the appellant was never engaged in providing event management service; that they did not possess the skills to provide such services;
- the department failed in verifying vital documents such as invoices on the basis of which investigating officer could have extended the investigation at recipient's end as to whether the appellant had rendered event management service; that the classification of the service by the department *suo moto* is without evaluating and corroborating any other facts;
- that there is a apparent mistake on record since they have neither installed an air conditioner nor do they have a license to serve alcohol;
- that they be granted the benefit of cum duty; that if cum duty benefit is granted, their tax liability would come to Rs. 4.30 lacs;
- that the impugned OIO be set aside.

4. Personal hearing in the matter was held on 31.1.2018 wherein Shri T Bhatt, appeared on behalf of the appellant. Shri Bhatt, reiterated the grounds of appeal and also explained the reasons for delay in filing the appeal.

5. I have gone through the facts of the case, the grounds of appeal and the oral averments raised during the course of personal hearing. However, before deciding the matter, I find that the appellant received the impugned OIO on 9.5.2017 while the appeal is filed on 22.12.2017. The appellant has filed a condonation of delay application in the matter, citing poor communication and work quality of the lawyer hired for the case.

*(Signature)*



7. I find that the aforementioned appeal have been filed beyond the stipulated 60 days time limit specified under section 85(3A) of the Finance Act, 1994. Relevant extracts of Section 85 of the Finance Act, 1994, is reproduced below for ease of reference:

Section 85. Appeals to the [Commissioner] of Central Excise (Appeals). —

[(1) Any person aggrieved by any decision or order passed by an adjudicating authority subordinate to the [Principal Commissioner of Central Excise or Commissioner of Central Excise] may appeal to the Commissioner of Central Excise (Appeals).]

(2) Every appeal shall be in the prescribed form and shall be verified in the prescribed manner.

(3) An appeal shall be presented within three months from the date of receipt of the decision or order of [such adjudicating authority], relating to service tax, interest or penalty under this Chapter [, made before the date on which the Finance Bill, 2012, receives the assent of the President] :

Provided that the [Commissioner] of Central Excise (Appeals) may, if he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of three months, allow it to be presented within a further period of three months.

[(3A) An appeal shall be presented within two months from the date of receipt of the decision or order of such adjudicating authority, made on and after the Finance Bill, 2012 receives the assent of the President, relating to service tax, interest or penalty under this Chapter :

Provided that the Commissioner of Central Excise (Appeals) may, if he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of two months, allow it to be presented within a further period of one month.]

(4) The [Commissioner] of Central Excise (Appeals) shall hear and determine the appeal and, subject to the provisions of this Chapter, pass such orders as he thinks fit and such orders may include an order enhancing the service tax, interest or penalty :

Provided that an order enhancing the service tax, interest or penalty shall not be made unless the person affected thereby has been given a reasonable opportunity of showing cause against such enhancement.

(5) Subject to the provisions of this Chapter, in hearing the appeals and making orders under this section, the [Commissioner] of Central Excise (Appeals) shall exercise the same powers and follow the same procedure as he exercises and follows in hearing the appeals and making orders under the [Central Excise Act, 1944] (1 of 1944).

[emphasis added]

8. I find that the aforementioned appeal has been filed beyond the prescribed time limit of two months. The delay in filing said appeals is more than one month after the prescribed time limit of two months. As such I am not empowered to condone the delay in this appeal, as it was filed after three months from the date of communication of the impugned order. In view of the foregoing, I reject the appeal on limitation as provided under Section 85 of the Finance Act, 1994.

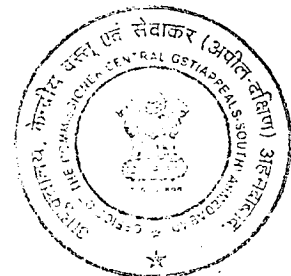
9. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।  
9. The appeal filed by the appellant stands disposed of in above terms.

*उमा शंकर*


(उमा शंकर)

आयुक्त (अपील्स)

Date : 12.2.2018



Attested

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

By RPAD.

To,

M/s. Crust Food Company  
HUF Rohit R Khanna,  
FF/101, Shilp Square B,  
Opp. Himalaya Mall,  
Drive in Road, Bodakdev,  
Ahmedabad

Copy to:-

1. The Chief Commissioner, Central Excise, Ahmedabad Zone .
2. The Principal Commissioner, Central Excise, Ahmedabad South.
3. The Deputy/Assistant Commissioner, Central Excise Division-VI, Ahmedabad South.
4. The Assistant Commissioner, System, Central Excise, Ahmedabad South.
5. Guard File.
6. P.A.

