

केंद्रीय कर आयुक्त (अपील)

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

केंद्रीय कर भवन,

7th Floor, GST Building, Near Polytechnic,

सातवीं मंजिल, पोलिटेकनिक के पास, आम्बावाडी, अहमदाबाद-380015

Ambayadi, Ahmedabad-380015

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रजिस्टर्ड डाक ए.डी. द्वारा

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

ख अपीत आदेश राख्या Order-In-Appeal Nos. AHM-EXCUS-001-APP-316-2017-18 दिनाँक Date : 12-02-2018 जारी करने की तारीख Date of Issue

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 दिनॉक: 01.05.2017 issued by Assistant Commissioner, Central Tax, Ahmedabad-South

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

कोई व्यक्ति इस अपील आदेश से असतोष 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 a 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 पूर्वाक्त धारा को उप–धारा के प्रथम परन्तुक के अंतर्गत पुनरीक्षण आवेदन अधीन सचिव, भारत सरकार, वित्त मंत्रालय, राजस्य 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, 4th 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 भामले में जब ऐसी हानि कारखाने से किनी भण्डागार या अन्य कारखाने में या किसी भण्डागार से दूसरे भण्डागार में भाल 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 विना भारत के वाहर (नेपाल या भूटान क्रो) निर्यात किया गया गाल 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 मामलें में जो भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यतित 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 विना भारत के वाहर (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 डयूटी केंडिट मान्य की गई है और ऐसे आदेश जो इस धारा एवं नियम के मुताबिक आयुक्त, अपील के द्वारा पारित वो समय पर या वाद 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 दिनाँक से तीन गास के भीतर मूल–आदेश एवं अपील आदेश की दो–दो प्रतियों के साथ उचित आवेदन किया जाना चाहिए। उसके साथ खाता इ. का मुख्यशीर्प 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 संज्ञान रकम एक लाख रूपये वा उससे कम हो तो रूपये 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-वी/35-इ के अंतर्गतः-
 - Under Section 35B/ 35E of CEA, 1944 an appeal lies to :-
- (क) उक्तलिखित परिच्छेद 2 (1) क में वताए अनुसार के अलावा की अपील, अपीलों 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, मेघाणी नगर, अहगदाबाद—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. 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.

(3) 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 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.

(4) न्यायालय शुल्क अधिनियम 1970 यथा संशोधित की अनुसूचि—1 के अंतर्गत निर्धारित किए अनुसार उक्त आवेदन या मूल आदेश यथारिथिति निर्णयन प्राधिकारी के आदेश में से प्रत्येक की एक प्रति पर रू.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 in 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 अपीलों 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 रोवा कर के अंतरीत, शामिल होगा "कर्तव्य की माग"(Duty Demanded) -

- (i) (Section) खंड 111) के तहत निर्धारित राशि;
- (ii) तिया गलत सेनवैट क्रेडिट की सशि:
- (iii) सेनतैट क्रेडिट नियम्म 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 cf the Cenvat Credit Rules.

(iii) amount payable under Rule 6 Cl the Central Great Rules. इस 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."

रोवाकर

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.
- 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.





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]

- 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.

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(उमा शंकर) आयुक्त (अपील्स)

Date: 12, 2.2018



<u>Attested</u>

Lukose) Superintendent (Appeal-I), Central Excise,

By RPAD.

Ahmedabad.

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.

The Deputy/Assistant Commissioner, Central Excise Division-VI, Ahmedabad South.
 The Assistant Commissioner, System, Central Excise, Ahmedabad South.

Guard File.

6. P.A.

