

आयुक्त (अपील - II) का कार्यालय केन्द्रीय उत्पाद शुल्क
सैन्टल एक्साइज भवन, सातवीं मंजिल, पौलिटैक्नीक के पास,
आंबावाडी, अहमदाबाद— 380015.

क फाइल संख्या : File No : V2(ST)137 /A-III/2015-16 /1533 to 1544
ख अपील आदेश संख्या : Order-In-Appeal No..AHM-SVTAX-000-APP-080 -16-17
दिनांक Date : 17.08.2016 जारी करने की तारीख Date of Issue 30/08/16

श्री उमा शंकर, आयुक्त (अपील-II) द्वारा पारित

Passed by Shri Uma Shanker Commissioner (Appeals-II)

ग _____ आयुक्त सेवाकर अहमदाबाद : आयुक्तालय द्वारा जारी मूल आदेश सं
_____ दिनांक : _____ से सृजित

Arising out of Order-in-Original No SD-02/REF-179/DRM/2015-16 Dated 30.11.2015

Issued by Asstt. Commr., STC, Div-II, Service Tax, Ahmedabad

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

M/s. Rasna Pvt ltd Ahmedabad

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 :-

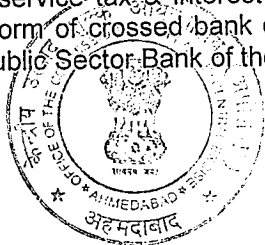
वित्तीय अधिनियम, 1994 की धारा 86 के अंतर्गत अपील को निम्न के पास की जा सकती:-
Under Section 86 of the Finance Act 1994 an appeal lies to :-

पश्चिम क्षेत्रीय पीठ सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण ओ. 20, न्यू मैन्टल हास्पिटल कम्पाउण्ड, मेघाणी 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 और लगाया गया जुर्माना रूपर 5 लाख या उससे कम है वहाँ रूपर 1000/- फीस भेजनी होगी। जहाँ सेवाकर की मांग, ब्याज की मांग और लगाया गया जुर्माना रूपर 5 लाख या 50 लाख तक हो तो रूपर 5000/- फीस भेजनी होगी। जहाँ सेवाकर की मांग, ब्याज की मांग और लगाया गया जुर्माना रूपर 50 लाख या उससे ज्यादा है वहाँ रूपर 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 accompanied 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.



G. Jhu

(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 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 (सीस्तेत) के प्रति अपीलों के मामलों में केन्द्रीय उत्पाद शुल्क अधिनियम, 1984 की धारा 34फ के अंतर्गत वित्तीय(संख्या-2) अधिनियम 2014(2014 की संख्या 24) दिनांक: 06.08.2014 जो की वित्तीय अधिनियम, 1994 की धारा 83 के अंतर्गत सेवाकर को भी लागू की गई है, द्वारा निश्चित की गई पूर्व-राशि जमा करना अनिवार्य है, बशर्त 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 हैं -

- (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 बशर्त 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 होंगे।

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,

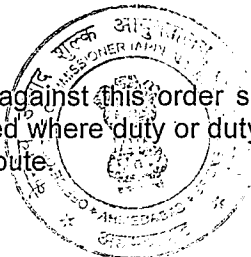
Under Central Excise and Service Tax, "Duty demanded" shall include:

- (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.

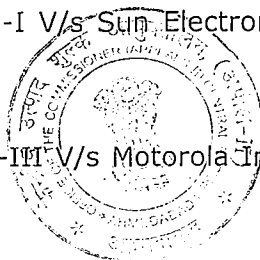


6. Being aggrieved with the impugned order, the appellants preferred an appeal on 27.01.2015 before the Commissioner (Appeals) with ground of appeal. It is contended in the appeal that-

- (i) The impugned order is arbitrary and bad in law. Order suffers from the vice of gross non-application of mind, therefore deserves to be quashed and set aside.
- (ii) Adjudicating authority has erred in not appreciating the various goods manufactured are squarely covered under said notification. Service provided by GTA in transporting foodstuff including flours, tea, coffee, jaggrey, sugar, milk product, salt and edible oil, excluding alcoholic beverages thereof are exempted. Appellant is manufacturing and transporting food stuff such as Rasna fruit squash, crystals, instant drink mix, fruit pulp etc hence exemption is available.
- (iii) Claim is wrongly rejected on the basis of non-submission of documents as appellant has produced sample copy and showed readiness to make available all document at appellant premises if officer is deputed to verify the same.
- (iv) Any service provided by GTA with respect to aforesaid food items, the same shall be exempted from the payment of service tax and as, due to reverse charge mechanism, the said benefit would be available to service recipient.
- (v) OIO may please be set aside with consequential reliefs.

7. Personal hearing in the case was granted on 21.07.2016 and Shri Mukesh Matrej, Consultant of appellant and Shri Uday Joshi, Advocate on behalf of appellant appeared before me and reiterated the ground of appeal and stated that when they were not required to pay duty, its deposit and limitation is not applicable. They submitted following citation-

- (v) Geojit BNP Paribas Finance Services Ltd V/s C.C.E, CUS & S.T., Kochi-2015(39)STR 706 (Ker.
- (vi) Commr. Of C.Ex., Bangalore-I V/s Sun Electronics Technologies Ltd. - 2015939) STR 709 (Kar).
- (vii) Commr. Of C.Ex., Bangalore-III V/s Motorola India Pvt. Ltd. 2008 911) STR 555 (kar.)



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8. I have carefully gone through the facts of the case on records, grounds of appeal in the Appeal Memorandum, citation judgments produced and oral submissions made by the appellants at the time of personal hearing. The appellant has vehemently contended that they are eligible for exemption and consequently the refund.

9. Prime issue before me is to decide whether appellant is eligible for exemption under Sr. No. 21(d) of Notification No. 25/2012-ST dt. 26.06.2012 as amended in respect of input and final product transported to and fro to factory is available to appellant or not. Subsidiary issue to be decided is whether on non submission of document at service tax office and appellant inability to prove that incidence of tax has not passed on to customer are enough grounds to reject the claim or not. Citations produced are not squarely applicable to present issue. Citations are regarding limitation period which is not issue in present case hen

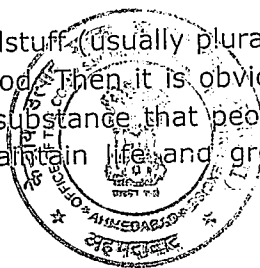
10. Serial No 21 of the Notification No 25/2012_ dated 20.06.2012 provides for an exemption for services provided by Goods Transport Agency , by way of transport of goods carriage. In original Notification No 25/2012 dated 20.06.2012,the said clause 21 (d) had been subsequently amended by Notification No 3/2013, dated 01.03.2013) (Applicable with effect from 01.04.2013) ,to read as "(d) foodstuff including flours, tea, coffee, jaggery, sugar, milk products, salt and edible oil, excluding alcoholic beverages". This clause was operative till 30.03.2015 before it was amended by Notification No 6/2015 dated 01.03.2015 (Applicable with effect from 01.04.2015)

11. I find that SCN refund matter is pertaining to period 01.04.2014 to 31.03.2015. Hence clause 21(d) for subject period is as "foodstuff including flours, tea, coffee, jaggery, sugar, milk products, salt and edible oil, excluding alcoholic beverages";

11.1 On a plain reading of notification 25/2015-ST, food stuff is given to include items like sugar, coffee, milk etc. though this is an inclusive clause and not restrictive, the items sought to be included should be read in light of the examples rendered. The term "foodstuff" has neither been defined under the service tax laws nor under the General Clauses Act and therefore it must be construed in its ordinary / dictionary meaning. The term Foodstuff is defined as follows:

As per Collinsdictionary.com: "Any material. Substance etc. that can be used as food". As per Worldwebonline.com: "Consumer goods sold by a grocer" or a substance that can be used or prepared for use as food".

11.2 Foodstuff:- Foodstuff (usually plural) means a substance that can be used or prepared for use as food. Then it is obvious to know the definition of 'Food'. Food means any nutritious substance that people or animals eat or drink or that plants absorb in order to maintain life and growth. As a layman's understanding food



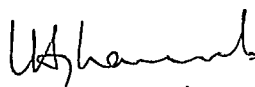
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means material used for food, Something fit to be eaten, a substance used or capable of being used as food or any substance that is used to make food. The exemption includes the any item used as "food stuff". Goods transported by appellant are Rasna fruit squash, Crystals instant drink, Mix, Rasna fruit plus, Rasna ruch etc. are fruit based goods falling under chapter 20 CETA 1985.

11.3 "Including" used before that *flours, tea, coffee, jaggery, sugar, milk products, salt and edible oil* in clause 21(d) of the Notification No 25/2012_ dated 20.06.2012 means that *flours, tea, coffee, jaggery, sugar, milk products, salt and edible oil* is part of a foodstuff. In no way it can be construed that exemption is only for *flours, tea, coffee, jaggery, sugar, milk products, salt and edible oil*. I hold that all edible items stated in SCN that qualify for foodstuff and transported by appellant are entitled for exemption under Serial No 21 of the Notification No 25/2012 dated 20.06.2012 as amended for period covered under show cause.

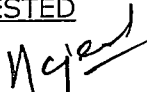
12. Regarding appellant inability to produce documents stating "very huge no. of Invoices" I find that statutory provision under Section 11B(1) states that refund application made to Asst. Commissioner shall be accompanied by such documentary or other evidence as the applicant may furnish to establish that the amount of duty has been paid. Application made without supporting documents deserves to be rejected as refund as per Section 11B (2) is allowed subject to satisfaction of the sanctioning authority. No section, rule, circular are produced by appellant to show that in case of bulky documents exemption from submission to revenue or facility for verification at appellant premises is given. I am in complete agreement with adjudicating authority in rejecting claim not supported by documents evidencing duty payment and also claim where no verification regards to unjust enrichment can be undertaken.

13. In view of above, appeal filed by the appellants is allowed for limited purpose of eligibility of availing exemption notification except that I uphold the OIO.

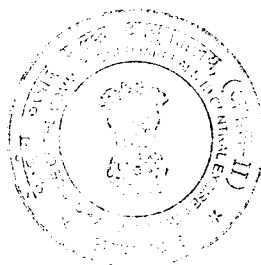

(UMA SHANKER)

COMMISSIONER (APPEAL-II)
CENTRAL EXCISE, AHMEDABAD.

ATTESTED


(R.R. PATEL)

SUPERINTENDENT (APPEAL-II),
CENTRAL EXCISE, AHMEDABAD.



To,

M/s Rasna Pvt. Ltd.,
Opp. Sears Tower, Gulbai Tekra,
Ahmedabad -380015 Ahmedabad

Copy to:

- 1) The Chief Commissioner, Central Excise, Ahmedabad.
- 2) The Commissioner, Service Tax., Ahmedabad-II.
- 3) The Additional Commissioner, C.Ex, Ahmedabad-II
- 4) The Asst. Commr. Service Tax, Div-II, APM Mall, Ahmedabad Ahmedabad.
- 5) The Asst. Commissioner (System), Service Tax, Ahmedabad.

6) Guard File.
P.A. File.



