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आयुक्त (अपील्स) का कार्यालय, वस्तु एवं सेवा कर और केन्द्रीय उत्पाद शुल्क::  
O/O THE COMMISSIONER (APPEALS), GST & CENTRAL EXCISE,

द्वितीय तल, जी एस टी भवन / 2<sup>nd</sup> Floor, GST Bhavan,  
रेस कोर्स रिंग रोड, / Race Course Ring Road,  
राजकोट / Rajkot - 360 001



Tele Fax No. 0281 - 2477952/2441142 Email: cexappealsrajkot@gmail.com

**रजिस्टर्ड डाक ए. डी. द्वारा :-**

क	अपील / फाइल संख्या / Appeal / File No. V2/17/GDM/2017	मूल आदेश सं / O.I.O. No. 14/ST/AC/2016-17	दिनांक / Date 16.12.2016
ख	अपील आदेश संख्या (Order-In-Appeal No.): <b>KCH-EXCUS-000-APP-147-2017-18</b>		

आदेश का दिनांक / Date of Order:	<b>08.01.2018</b>	जारी करने की तारीख / Date of issue:	<b>10.01.2018</b>
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कुमार संतोष, आयुक्त (अपील्स), राजकोट द्वारा पारित /  
Passed by Shri Kumar Santosh, Commissioner (Appeals), Rajkot

ग अथवा उपरोक्त/सदस्य/अध्यक्ष/सहायक आयुक्त, केन्द्रीय उत्पाद शुल्क/सेवाकर, राजकोट / जामनगर / गांधीधाम। द्वारा उपरोक्तित जरी  
मूल आदेश से सृजित /  
Arising out of above mentioned OIO issued by Additional/Joint/Deputy/Assistant Commissioner, Central Excise / Service Tax,  
Rajkot / Jamnagar / Gandhidham :

घ **अपीलकर्ता & प्रतिवादी का नाम एवं पता /Name & Address of the Appellant & Respondent :-**  
**M/s. Ruchi Soya Ind. Ltd., Survey No., 217/2, Village - Mithirohar, Gandhidham,,  
Kutch - 370 201,**

इस आदेश(अपील) से ध्वजित कोई व्यक्ति निम्नलिखित तरीके में उपयुक्त प्राधिकारी / प्राधिकरण के समक्ष अपील दाखल कर सकता है।/  
Any person aggrieved by this Order-in-Appeal may file an appeal to the appropriate authority in the following way.

- (A) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपील न्यायाधिकरण के प्रति अपील, केन्द्रीय उत्पाद शुल्क अधिनियम, 1944 की धारा 35B के अंतर्गत एवं वित्त अधिनियम, 1994 की धारा 86 के अंतर्गत निम्नलिखित जगह की जा सकती है। /  
Appeal to Customs, Excise & Service Tax Appellate Tribunal under Section 35B of CEA, 1944 / Under Section 86 of the Finance Act, 1994 an appeal lies to:-
- (i) वर्गीकरण मूल्यांकन से सम्बंधित सभी मामलों सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपील न्यायाधिकरण की विशेष पीठ, वेस्ट ब्लॉक नं 2, आर. के. पुरम, नई दिल्ली, को की जानी चाहिए। /  
The special bench of Customs, Excise & Service Tax Appellate Tribunal of West Block No. 2, R.K. Puram, New Delhi in all matters relating to classification and valuation.
- (ii) उपरोक्त परिच्छेद 1(a) में बतलाए गए अपील के अलावा शेष सभी अपीलें सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपील न्यायाधिकरण (सिस्टम) की परिचय क्षेत्रीय पीठिका, , दिल्लीय तल, बहमाली भवन असावा अहमदाबाद- 380016 को की जानी चाहिए। /  
To the West regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at 2<sup>nd</sup> Floor, Bhaumali Bhawan, Aasawa Ahmedabad-380016 in case of appeals other than as mentioned in para- 1(a) above
- (iii) अपील न्यायाधिकरण के समक्ष अपील प्रस्तुत करने के लिए केन्द्रीय उत्पाद शुल्क (अपील) विधायनी, 2001, के नियम 6 के अंतर्गत लिपिबद्ध किए गये फॉर्म EA-3 को चार प्रतियों में दर्ज किया जाना चाहिए। इनमें से कम से कम एक प्रति के साथ, जहां उत्पाद शुल्क की राशि, व्याज की राशि और अलग गणना, रुपए 5 लाख या उससे कम, 5 लाख रुपए या 50 लाख रुपए तक अथवा 50 लाख रुपए से अधिक है तो क्रमशः 1,000/- रुपए, 5,000/- रुपए अथवा 10,000/- रुपए का निर्धारित जमा शुल्क की प्रति संलग्न करें। निर्धारित शुल्क का भुगतान, संबंधित अपील न्यायाधिकरण की शाखा के सहायक रजिस्टार के नाम से किसी भी सर्वजनिक क्षेत्र के बैंक द्वारा जारी रेखांकित बैंक ड्राफ्ट द्वारा किया जाना चाहिए। संबंधित ड्राफ्ट का भुगतान, बैंक की उस शाखा में होना चाहिए जहां संबंधित अपील न्यायाधिकरण की शाखा स्थित है। स्थान आदेश (स्टे ऑर्डर) के लिए आवेदन-पत्र के साथ 500/- रुपए का निर्धारित शुल्क जमा करना होगा। /  
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.5000/-, Rs.10,000/- where amount of duty demanded/interest/penalty/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 Asst. Registrar of branch of any nominated public sector bank of the place where the bench of any nominated public sector bank of the place where the bench of the Tribunal is situated. Application made for grant of stay shall be accompanied by a fee of Rs. 500/-.
- (B) अपील न्यायाधिकरण के समक्ष अपील, वित्त अधिनियम, 1994 की धारा 86(1) के अंतर्गत सेवाकर विधायनी, 1994, के नियम 9(1) के तहत लिपिबद्ध फॉर्म S.T.5 में चार प्रतियों में की जा सकती है एवं उसके साथ जिस आदेश के विरुद्ध अपील की गयी हो, उसकी प्रति साथ में संलग्न करें। इनमें से एक प्रति प्रमाणित होनी चाहिए और इनमें से कम से कम एक प्रति के साथ, जहां सेवाकर की राशि, व्याज की राशि और अलग गणना, रुपए 5 लाख या उससे कम, 5 लाख रुपए या 50 लाख रुपए तक अथवा 50 लाख रुपए से अधिक है तो क्रमशः 1,000/- रुपए, 5,000/- रुपए अथवा 10,000/- रुपए का निर्धारित जमा शुल्क की प्रति संलग्न करें। निर्धारित शुल्क का भुगतान, संबंधित अपील न्यायाधिकरण की शाखा के सहायक रजिस्टार के नाम से किसी भी सर्वजनिक क्षेत्र के बैंक द्वारा जारी रेखांकित बैंक ड्राफ्ट द्वारा किया जाना चाहिए। संबंधित ड्राफ्ट का भुगतान, बैंक की उस शाखा में होना चाहिए जहां संबंधित अपील न्यायाधिकरण की शाखा स्थित है। स्थान आदेश (स्टे ऑर्डर) के लिए आवेदन-पत्र के साथ 500/- रुपए का निर्धारित शुल्क जमा करना होगा। /  
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 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. / Application made for grant of stay shall be accompanied by a fee of Rs.500/-.

- (i) **वित्त अधिनियम, 1994 की धारा 86 की उप-धाराओं (2) एवं (2A) के अंतर्गत दर्जे की राशि अपील, सेवाकर नियमावली, 1994, के नियम 9(2) एवं 9(2A) के तहत निर्धारित फॉर्म S.T.-7 में की जा सकती एवं उसके साथ अनुसूक्त, केन्द्रीय उत्पाद शुल्क अध्याय अनुसूक्त (अपील), केन्द्रीय उत्पाद शुल्क द्वारा पारित आदेश की प्रतियाँ संलग्न करे (जैसे से एक प्रति प्रामाणित होनी चाहिए) और अनुसूक्त द्वारा सहायक अनुसूक्त अथवा उपानुसूक्त, केन्द्रीय उत्पाद शुल्क/सेवाकर, को अपीलीय न्यायाधिकरण को आवेदन दर्ज करने का निर्देश देने वाले आदेश की प्रती भी साथ में संलग्न करनी होगी। / The appeal under sub section (2) and (2A) of the section 86 the Finance Act 1994, shall be filed in Form ST.7 as prescribed under Rule 9 (2) & 9(2A) of the Service Tax Rules, 1994 and shall be accompanied by a copy of order of Commissioner Central Excise or Commissioner, Central Excise (Appeals) (one of which shall be a certified copy) and copy of the order passed by the Commissioner authorizing the Assistant Commissioner or Deputy Commissioner of Central Excise/ Service Tax to file the appeal before the Appellate Tribunal.**
- (ii) **सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय प्राधिकरण (सेनवेट) के प्रति अपील के मामले में केन्द्रीय उत्पाद शुल्क अधिनियम 1944 की धारा 35एफ के अंतर्गत, जो की वित्तीय अधिनियम, 1994 की धारा 83 के अंतर्गत सेवाकर को भी लागू की गई है, इस आदेश के प्रति अपीलीय प्राधिकरण में अपील करने समय उत्पाद शुल्क/सेवा कर मांग के 10 प्रतिशत (10%), जब मांग एवं जुर्माना विवादित है; या जुर्माना, जब केवल जुर्माना विवादित है, का भुगतान किया जाए, बशर्त कि इस धारा के अंतर्गत जमा कि जाने वाली अपेक्षित देय राशि दस करोड़ रुपए से अधिक न हो। केन्द्रीय उत्पाद शुल्क एवं सेवाकर के अंतर्गत "मांग किए गए शुल्क" में निम्न शामिल है।**
- (i) धारा 11 डी के अंतर्गत रकम
  - (ii) सेनवेट जमा की ली गई राशि
  - (iii) सेनवेट जमा नियमावली के नियम 8 के अंतर्गत देय रकम
- बशर्त यह कि इस धारा के प्रावधान वित्तीय (सं. 2) अधिनियम 2014 के अन्तर्ग से पूर्व किसी अपीलीय प्राधिकारी के समक्ष विचारणीय स्थिति अर्थात् एवं अपील को लागू नहीं होवे। /
- For an appeal to be filed before the CESTAT, 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, 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, provided the amount of pre-deposit payable would be subject to a ceiling of Rs. 10 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.
- (C) **भारत सरकार को पुनरीक्षण आवेदन :**  
Revision application to Government of India:  
इस आदेश की पुनरीक्षण प्राधिकार निम्नलिखित मामलों में, केन्द्रीय उत्पाद शुल्क अधिनियम, 1994 की धारा 35EE के प्रथम पारंगन के अंतर्गत अर्थात् वित्त, भारत सरकार, पुनरीक्षण आवेदन इकाई, वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन टॉप भवन, संसद मार्ग, नई दिल्ली-110001, को किया जाना 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-35B ibid:
- (i) यदि मांग के किसी नुकसान के मामले में, जहां नुकसान किसी मात्र को किसी कारखाने से भंडार गृह के पारगमन के दौरान या किसी अन्य कारखाने या फिर किसी एक भंडार गृह से दूसरे भंडार गृह पारगमन के दौरान, या किसी भंडार गृह में या भंडारण में मांग के प्रसंस्करण के दौरान, किसी कारखाने या किसी भंडार गृह में मांग के नुकसान के मामले में। / In case of any loss of goods, where the loss occurs 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
  - (ii) भारत के बाहर किसी राष्ट्र या क्षेत्र को निर्यात कर रहे मांग के विभिन्नता में प्रदत्त किये गए मांग पर भरी गई केन्द्रीय उत्पाद शुल्क के छूट (रिबेट) के मामले में, जो भारत के बाहर किसी राष्ट्र या क्षेत्र को निर्यात की राशि है। / 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.
  - (iii) यदि उत्पाद शुल्क का भुगतान किए बिना भारत के बाहर, नेपाल या भूटान को मांग निर्यात किया गया है। / In case of goods exported outside India export to Nepal or Bhutan, without payment of duty.
  - (iv) सुनिश्चित उत्पाद के उत्पादन शुल्क के भुगतान के लिए जो इच्छी क्रेडिट इस अधिनियम एवं इसके विभिन्न प्रावधानों के तहत मान्य की गई है और ऐसे आदेश जो अनुसूक्त (अपील) के द्वारा वित्त अधिनियम (सं. 2), 1998 की धारा 109 के द्वारा नियत की गई तरीक अथवा स्वभावविधि पर या बाट में पारित किए गए हैं। / 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 such order is passed by the Commissioner (Appeals) on or after, the date appointed under Sec. 109 of the Finance (No.2) Act, 1998.
  - (v) उपरोक्त आवेदन की दो प्रतियां फॉर्म संख्या EA-8 में, जो की केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001, के नियम 9 के अंतर्गत निर्दिष्ट है, इस आदेश के संवेषण के 3 माह के अंतर्गत की जानी चाहिए। उपरोक्त आवेदन के साथ मूल आदेश व अपील आदेश की दो प्रतियां संलग्न की जानी चाहिए। साथ ही केन्द्रीय उत्पाद शुल्क अधिनियम, 1944 की धारा 35-EE के तहत निर्धारित शुल्क की अदायगी के साक्ष्य के तौर पर TR-6 की प्रति संलग्न की जानी 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 O.I.O. 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.
  - (vi) पुनरीक्षण आवेदन के साथ निम्नलिखित निर्धारित शुल्क की अदायगी की जानी चाहिए। / जहाँ संलग्न रकम एक लाख रुपये या उससे कम हो तो रुपये 200/- का भुगतान किया जाए और यदि संलग्न रकम एक लाख रुपये से ज्यादा हो तो रुपये 1000/- का भुगतान किया जाए। / The revision application shall be accompanied by a fee of Rs. 200/- where the amount involved in Rupees One Lac or less and Rs. 1000/- where the amount involved is more than Rupees One Lac.
- (D) यदि इस आदेश में कई मूल आदेशों का समावेश है तो प्रत्येक मूल आदेश के लिए शुल्क का भुगतान, उपरोक्त ढंग से किया जाना चाहिए। इस लक्ष्य के होते हुए भी की निम्न पढ़ी कथों से बचने के लिए व्यक्तिगत अपीलीय न्यायाधिकरण को एक अपील या केन्द्रीय सरकार को एक आवेदन किया जाता है। / In case, if the order covers various numbers 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 scripioria work if excising Rs. 1 lakh fee of Rs. 100/- for each.
- (E) न्यायाधीश न्यायालय शुल्क अधिनियम, 1975, के अनुसूची-1 के अनुसार मूल आदेश एवं स्थगन आदेश की प्रति पर निर्धारित 6.50 रुपये 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 adjudicating authority shall bear a court fee stamp of Rs. 6.50 as prescribed under Schedule-1 in terms of the Court Fee Act, 1975, as amended.
- (F) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (बसे विधि) नियमावली, 1982 में वर्णित एवं अन्य संबंधित मामलों को सम्बन्धित करने वाले नियमों की और भी ध्यान आकर्षित किया जाता है। / 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.
- (G) उच्च अपीलीय प्राधिकारी को अपील दाखिल करने से संबंधित व्यापक, विस्तृत और नवीनतम प्रावधानों के लिए, अपीलार्थी विभागीय वेबसाइट [www.cbec.gov.in](http://www.cbec.gov.in) को देख सकते हैं। / For the elaborate, detailed and latest provisions relating to filing of appeal to the higher appellate authority, the appellant may refer to the Departmental website [www.cbec.gov.in](http://www.cbec.gov.in)

**:: ORDER-IN-APPEAL ::**

M/s. Ruchi Soya Industries Limited, Mithi Rohar, Gandhidham, District – Kutch (hereinafter referred to as "appellant") has filed the present appeal against the Order-in-Original No. 14/ST/AC/2016-17 dated 16.12.2016 (hereinafter referred to as "impugned order") passed by the Assistant Commissioner, Service Tax Division, Gandhidham (Kutch) (hereinafter referred to as "lower adjudicating authority").

2. The brief facts of the case are that audit of appellant holding Service Tax Registration Number AAACR2892IXM015 for service provider of "Goods Transport Agency Service" and "Storage & Warehousing of Goods service" revealed that they had provided "Cargo Handling Service" to MMTC Limited, Ahmedabad during the period January, 2010 to March, 2011. SCN No. V.ST/AR-I/GDM/JC/105/2016 dated 19.10.2015 was issued to appellant demanding Service Tax of Rs. 6,76,225/- under proviso to Section 73(1) of Finance Act, 1994 (hereinafter referred to as "Act"), to recover interest under Section 75 of the Act and to impose penalty under Section 76/Section 77/Section 78 of the Act. The lower adjudicating authority vide impugned order confirmed demand of Service Tax of Rs. 6,76,225/- under proviso to Section 73(1) of the Act along with interest under Section 75 of the Act and imposed penalty of Rs. 5,000/- under Section 77 of the Act and penalty of Rs. 6,76,225/- under Section 78 of the Act.

3. Being aggrieved by the impugned order, the appellant filed the present appeal, *inter alia*, on the following grounds:

(i) The appellant has entered into an agreement with MMTC Limited for job-work. The scope of job-work was that the appellant undertake to receive, weigh, store, process Crude Palm Oil and pack RBD Palmolein and keep the material in hygienic condition, safe from any damage, contamination, pilferage, etc.; receive and handle imported RBD Palmolein, its storage in Shore Tanks and/or transportation, where applicable, to the processing and packing plant for storage thereof, additions, mixing of Vitamin A & Vitamin D as per the requirement in one Liter pouches and then in Corrugated Boxes. The basic job was to produce packed refined oil from loose Crude Palm Oil and RBD Palm Oil provided by MMTC. It is necessary to treat Crude Oil by series of processes such as degumming, bleaching, deodorization, collectively known as Refining. The RBD Palm is further processed for Churning for addition of Vitamins and packing. The addition/mixing of Vitamin amounts to manufacture since it is only after the addition/mixing of Vitamins, the product becomes marketable. The other allied activities are weighment of material at receipt and at dispatch, storage of raw material and finished goods, quality checks and material handling which are integral part of manufacturing activity and inherent and pertinent to process. From the aforesaid process carried out by appellant for the purpose of job-work, one cannot say that it is a 'cargo handling service'. Storage and handling of crude edible oils is incidental to entire activity.



(ii) The definition of 'Cargo Handling Service' defined under Section 65(23) of the Act covers only standalone activity and not covers activities which are incidental to manufacturing activities. The impugned services are not falling under the scope of 'Cargo Handling Service' as alleged in the SCN. As per Chapter Note of Chapter 15, certain processes are described as amounting to manufacture; that the job work carried out by the appellant amounts to manufacture within meaning of the Chapter Note of Chapter 15; that the appellant relied on CBEC Letter F.No. 249/1/2006-CX.4 dated 27.10.2008 and decision of Hon'ble CESTAT Mumbai in the case of Jagdish Oil Mills reported as 2010 (20) STR 85 (Tri. – Mumbai).

(iii) Audit was conducted on 22.06.2011 and entire facts were brought to notice of Auditors. The appellant has submitted all relevant details vide letter dated 24.04.2012, however SCN dated 19.10.2015 was issued alleging suppression of facts, etc. with an intention to invoke longer period of limitation. If all facts are within the knowledge of department, extended period of limitation is not available as held by Hon'ble Apex Court in the cases of Nizam Sugar Factory reported as 2006 (197) ELT 465 (SC) and Pragathi Concrete Products (P) Ltd. reported as 2015-TIOL-223-SC-CX. The appellant referred CBEC Circular No. 5/92-CX.4 dated 13.10.92 wherein it has been clarified that mere non-declaration is not sufficient for invoking longer period of limitation.

(iv) The appellant has acted bonafide, disclosed all information to the department and therefore, there is no stipulated ingredients for imposing penalty. It is also submitted that penalties under Section 76 of the Act and Section 78 of the Act cannot be imposed simultaneously. The provisions have been amended w.e.f. 10.05.2008 barring imposition of penalty simultaneously under both these Sections. The appellant relied on following decisions:

- Board of Control for Cricket in India reported as 2015 (37) STR 785 (Tri. – Mumbai)
- Insecticides (India) Limited reported as 2015 (317) ELT 767 (Tri. – Delhi)
- Indur Global Limited reported as 2015 (38) STR 14 (Guj.)
- Wockhardt Ltd. reported as 2009-TIOL-1308-CESTAT-MUM
- Cosmic Dye Chemical reported as 2002-TIOL-236-SC-CX-LB
- Padmini Products reported as 1989 (43) ELT 195 (SC)
- Gopal Zarda Udhyog reported 2005 (188) ELT 251 (SC)

(v) Demand to charge interest under Section 75 of the Act also does not arise.

4. Personal hearing in the matter was attended to by Shri Johny John, Dy. Manager (Indirect Taxes), who reiterated submissions made in the Grounds of Appeal and submitted written P.H. submissions stating that they have not undertaken 'Cargo Handling Service' but only job-work; that they have paid Service Tax on storage charges on shore tanks hired by them and also on GTA for transportation of imported RBD Palmolein from shore tanks to their factory premises by tankers; that there is no suppression of facts on their part; that no service tax is payable by them.

**FINDINGS: -**

5. I have carefully gone through the facts of the case, the impugned order, appeal memorandum and written as well as oral submissions of the appellant. The issue to be decided in the present appeal is whether the activities of loading, unloading and packing of bulk Crude Palm Oil and RBD Palmolein in small containers, is falling under 'Cargo Handling Service' as defined under Section 65(23) of the Act or not in the facts of this case especially when the said activities were performed together with activities of processing of such imported cargo.

6. The adjudicating authority has observed that the activities done by the appellant was composite service and falls under 'Cargo Handling Service' and the appellant is liable to pay service tax on gross amount charged for the same after deducting actual expenses incurred for packing material in terms of Notification No. 12/2013-ST. The appellant challenged the impugned order by contending that the basic job was to produce packed refined oil from loose Crude Palm Oil and RBD Palm Oil provided by MMTC; that the addition/mixing of Vitamin amounts to manufacture since it is only after the addition/mixing of Vitamins, the product becomes marketable and that 'Cargo Handling Service' defined under Section 65(23) of the Act covers only standalone activity and not covers activities which are incidental to manufacturing activities. The brief facts of the case establish that the appellant entered into an agreement with MMTC Limited, Ahmedabad and the scope of work to be performed by the appellant, as per agreement, was that of receiving, handing, storage, transporting imported RBD Palmolein and Crude Palm Oil from shore tank to their processing and packing plant, refining and processing of RBD Palmolein and Crude Palm Oil. Packing of material in one liter pouches and its storage and loading of packaged materials into trucks/lorries of Gujarat State Civil Supplies Corporation against Delivery Challans issued by MMTC. I would like to reproduce relevant clauses of agreement dated 16.07.2010 for the ease of understanding.

5. *JOB TO BE PERFORMED*

*Handwritten signature*

(A) *Receiving and handling the RBD Palmolein imported at the discharge port viz. Kandla Port, its storage in shore tanks and/or transportation, where applicable, to the processing and packing plant for storage thereof, additions/mixing of vitamin A & D as per the requirement of State Government and packing of the refined edible oil in one liter pouches and then in corrugated boxes as per the specification, storage of the packed material and loading the packed oil into truck/lorries of Gujarat State Civil Supplies Corporation against the Delivery Challans issued by MMTC.*

(B) *Receiving and handling the Crude Edible Oil imported at the discharge port, its storage in shore tanks and/or transportation where applicable, to the processing plant and packing plant for storage thereof, refining the crude oil, additions/mixing of Vitamin A & Das per the requirement of State Government and packing of the refined edible oil in one liter pouches and then in corrugated boxes as per specification, storage of packed material and loading the same into trucks/lorries.*

9. PAYMENT TERMS

It is mutually agreed between the parties that for Kandla Port an amount of Rs. 3951/- (Rs. Three Thousand Nine Hundred Fifty One only) per M.T. (towards the cost of packing material and towards handling, storing, packing and CHA charges) will be paid by MMTC to RUCHI for the job work as defined in Para 5(A) above.

And an amount of Rs. 6180 (Rs. Six Thousand One Hundred Eighty only) per M.T. and Rs. 5,960/- (Rs. Five Thousand Nine Hundred Sixty only) per MT (towards the cost of packing material and towards handling, storing, packing and CHA charges) will be paid by MMTC to RUCHI for the job work as defined in Para 5(B) above for CPO and SOYA respectively.

Rs. 150/- PMT shall also be paid towards adding of Vitamin A & D in the edible oils as defined in Para 5(A) and 5(B).

6.1. In view of above, it could be seen that the appellant had undertaken activities of loading, unloading, packing and repacking of goods and its transportation from shore tanks to their processing plant together with processing of goods. In order to examine as to whether said activities carried out by the appellant is liable for service tax under the category of 'Cargo Handling Service', I would like to reproduce the definition of 'Cargo Handling Service' provided under Section 65(23) of the Act, which reads as under: -

"cargo handling service" means loading, unloading, packing or unpacking of cargo and includes. —

(a) cargo handling services provided for freight in special containers or for non-containerized freight, services provided by a container freight terminal or any other freight terminal, for all modes of transport, and cargo handling service incidental to freight; and

(b) service of packing together with transportation of cargo or goods, with or without one or more of other services like loading, unloading, unpacking.

but does not include, handling of export cargo or passenger baggage or mere transportation of goods

(Emphasis supplied)

*Handwritten signature/initials*

6.2 It is clear from the definition of 'Cargo Handling Service' under Section 65(23) of the Act that the definition of 'Cargo Handling Service' is inclusive definition and includes activities of loading, unloading, packing or unpacking of cargo and service of packing together with transportation of cargo or goods. In the instant case, as it could be seen from the terms of agreement, the appellant has undertaken activities of handling of cargo, loading, unloading and transportation of cargo from discharge port to shore tanks and from shore tanks to their processing plant, packing of imported cargo in one liter pouches, etc. These services are not provided as independent activities but are the means for successful provision of the principal service, namely, Cargo Handling Service. It is a well-accepted principle of classification that a single composite service should not be broken into its components and classified as separate services. As clarified by CBEC vide letter F.No. 334/4/2006- TRU, dated 28.2.2006 (para 3.2



and 3.3) and letter F.No. 334/1/2008-TRU, dated 29.2.2008 (para 3.2 and 3.3), a composite service, even if it consists of more than one service, should be treated as a single service based on the main or principal service and accordingly classified. I am of the considered view that while taking a view, both the form and substance of the transactions are required to be taken into account and the guiding principle is to identify the essential features of the transactions and classification in such cases are to be based on essential character by applying the principle of classification enumerated in Section 65A of the Act. The appellant has also carried out activities of addition of Vitamin A & Vitamin D into RBD Palmolein and Crude Palm Oil and appellant contended that since these activities 'amounts to manufacture' as per Chapter Note of Chapter 15 of Central Excise Tariff, they are not liable to pay service tax under the category of 'Cargo Handling Service'. I do not find any substance in this argument. I find that addition of Vitamins and packing of goods in small containers have nothing to do with the principal activities such as handling, loading, unloading, packing and repacking of imported cargo undertaken by them. Thus, if any ancillary/ intermediate service is provided in relation to cargo handling service, and the charges, if any, for such services are included in the invoice, such service would form part of Cargo Handling Service. The appellant cannot escape from discharging service tax liability under the guise that activities amount to manufacture of goods. Hence, I am of the considered view that the appellant has provided 'Cargo Handling Service' to MMTC, Ahmedabad. Accordingly, I do not find any reason to interfere with the findings of lower adjudicating authority and I uphold the impugned order demanding recovery of service tax of Rs. 6,76,225/- along with interest.

7. As regards issue of limitation, the appellant has vehemently contended that Audit was conducted on 22.06.2011 and entire facts were brought to notice of Auditors and that appellant has submitted all relevant details vide letter dated 24.04.2012, however SCN dated 19.10.2015 was issued alleging suppression of facts, etc. invoking longer period of limitation; that all facts were within the knowledge of the department and hence, extended period of limitation is not available. I find that appellant was registered as service provider for quite a long time and hence, they were aware about Service Tax Law. Even then the appellant neither intimated department about providing of such services to the department. It is only audit of the appellant, which revealed that the appellant had provided 'Cargo Handling Service'. Hence, I find that this is a fit case involving ingredients of suppression of facts with intent to evade payment of Service Tax and therefore extended period under proviso to Section 73(1) of the Act is correctly invoked in the impugned order. In the circumstances. It is not the case that the issue was pointed out during the earlier Audit. I find that Hon'ble Supreme Court's decisions in the case of Nizam Sugar Factory reported as 2006 (197) ELT 465 (SC) and Pragathi Concrete Products (P) Ltd reported as 2015-TIOL-223-SC-CX are given in different context. In the decision of Nizam Sugar Factory, the Hon'ble Apex Court has held that allegation of suppression of facts against the appellant cannot be sustained when the first SCN was issued and all relevant facts were in the knowledge of the

Department, then while issuing second and third show cause notices on the same/similar facts could not invoke suppression of facts. The facts of instant case are not similar to the facts of Nizam Sugar Factory case, as in the instant case, proceedings for recovery of service tax for rendering 'Cargo Handling Service' during the period from January, 2010 to March, 2011 was initiated under this very SCN. In the case of Pragathi Concrete Products (P) Ltd. reported as 2015-TIOL-223-SC-CX, the Hon'ble Apex Court has held that unit of assessee was audited during this period several times and there were physical inspections by the Department as well and therefore, there could not be any case of suppression, which are not the facts of the present case. Hence, I am of the view that SCN has rightly been issued invoking larger period as provided under proviso to Section 73(1) of the Act. My views are strengthened by the decision of the Hon'ble Gujarat High Court in the case of M/s. Neminath Fabrics – 2010 (256) ELT 369 (Guj) wherein it has held that: -

"....."

16. The termini from which the period of "one year" or "five years" has to be computed is the relevant date which has been defined in sub-section (3)(ii) of Section 11A of the Act. A plain reading of the said definition shows that the concept of knowledge by the departmental authority is entirely absent. Hence, if one imports such concept in sub-section (1) of Section 11A of the Act or the proviso thereunder it would tantamount to rewriting the statutory provision and no canon of interpretation permits such an exercise by any Court. If it is not open to the superior court to either add or substitute words in a statute such right cannot be available to a statutory Tribunal.

17. The proviso cannot be read to mean that because there is knowledge the suppression which stands established disappears. Similarly the concept of reasonable period of limitation which is sought to be read into the provision by some of the orders of the Tribunal also cannot be permitted in law when the statute itself has provided for a fixed period of limitation. It is equally well settled that it is not open to the Court while reading a provision to either rewrite the period of limitation or curtail the prescribed period of limitation.

18. The Proviso comes into play only when suppression etc. is established or stands admitted. It would differ from a case where fraud, etc. are merely alleged and are disputed by an assessee. Hence, by no stretch of imagination the concept of knowledge can be read into the provisions because that would tantamount to rendering the defined term "relevant date" nugatory and such an interpretation is not permissible.

19. The language employed in the proviso to sub-section (1) of Section 11A, is clear and unambiguous and makes it abundantly clear that moment there is non-levy or short levy etc. of central excise duty with intention to evade payment of duty for any of the reasons specified there under, the proviso would come into operation and the period of limitation would stand extended from one year to five years. This is the only requirement of the provision. Once it is found that the ingredients of the proviso are satisfied, all that has to be seen as to what is the relevant date and as to whether the show cause notice has been served within a period of five years therefrom.

20. Thus, what has been prescribed under the statute is that upon the reasons stipulated under the proviso being satisfied, the period of limitation for service of show cause notice under sub-section (1) of Section 11A, stands extended to five years from the relevant date. The period cannot by reason of any decision of a Court or even by subordinate legislation be either curtailed or enhanced. In the present case as well as in the decisions on which reliance has been placed by the learned advocate for the respondent, the Tribunal has introduced a novel concept of date of knowledge and has imported into the proviso a new period of limitation of six months from the date of knowledge. The reasoning appears to be that once knowledge has been acquired by the department there is no suppression and as such the ordinary statutory period of limitation prescribed under sub-section (1) of Section 11A would be applicable. However such reasoning appears to be fallacious inasmuch as once the suppression is admitted, merely because the department acquires knowledge of the irregularities the suppression would not be obliterated.

(Emphasis supplied)




8. The appellant has contended that penalties under Section 76 of the Act and Section 78 of the Act cannot be imposed simultaneously. I find that lower adjudicating authority has imposed penalty under Section 78 of the Act and has not imposed any simultaneous penalty under Section 76 of the Act. Therefore, contention of the appellant is factually wrong and does not merit any consideration on this ground. I also find that the appellant was registered service tax assessee and the registered assessee is to be considered to be aware of statutory provisions relating to discharging their service tax liability. As discussed earlier, the appellant has willfully suppressed the fact of providing 'Cargo Handling Service' and never disclosed these facts to the Department. The evasion of service tax was detected only during the course of audit, and hence, imposition of penalty under Section 78 of the Act is justified and accordingly, I uphold penalty imposed under Section 78 of the Act.

9. As regard to penalty of Rs. 5,000/- imposed under Section 77 of the Act, I find that the appellant has failed to correctly assess their service tax liability and have not paid service tax at the applicable rate and therefore penalty under Section 77 of the Act is justified and I uphold the same.

10. In view of above factual and legal position, I uphold impugned order and reject the appeal.

10.1. The appeal filed by the appellant is disposed off in above terms.

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

  
8/1/2018  
(कुमार संतोष)  
आयुक्त (अपील्स)

**By Regd. Post AD**

To,

M/s. Ruchi Soya Industries Limited, Mithi Rohar, Gandhidham, District – Kutch	मे. रुचि सोया इंडस्ट्रीज़ लिमिटेड, मीठी रोहर, गांधीधाम, जिल्ला - कच्छ
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**Copy to:**

- 1) The Chief Commissioner, GST & Central Excise, Ahmedabad Zone, Ahmedabad.
- 2) The Commissioner, GST & Central Excise Commissionerate, Gandhidham.
- 3) The Assistant Commissioner, GST & Central Excise Division, Gandhidham-Kutch.
- 4) Guard File.