



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



द्वितीय तल, जी एस टी भवन / 2nd 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.	मूल आदेश नं / OIO No.	दिनांक / Date
	V2/183/RAJ/2016	44/ST/REF/2016	27.04.2016

ख. अपील आदेश संख्या (Order-In-Appeal No.):

RAJ-EXCUS-000-APP-026-2017-18

आदेश का दिनांक / Date of Order:	12.07.2017	जारी करने की तारीख / Date of issue:	14.07.2017
------------------------------------	-------------------	--	-------------------

कुमार संतोष, आयुक्त (अपील), राजकोट द्वारा पारित /
Passed by Shri Kumar Santosh, Commissioner (Appeals), Rajkot

ग. अगर आयुक्त/अपील अधिकारी/उप-आयुक्त/सहायक आयुक्त, केन्द्रीय उत्पाद शुल्क सेवाकर, राजकोट / जामनगर / गांधीधाम द्वारा उपरोक्तित जारी मूल आदेश से सूचित /
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. Tirth Agro Technology P. Ltd., Shaktiman Survey No. 108/1, Plot No. B, NH-27, Nr. Bharudi Toll Plaza, Bhunava (Village), Taluka- Gondal, Dist : Rajkot

इस आदेश(अपील) से व्यक्तित कोई व्यक्ति निम्नलिखित तरीके में उपरोक्त अधिकारी / अधिकारी के समक्ष अपील दायर 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:-
- (B) सर्वोच्च न्यायालय से सम्बन्धित सभी मामले 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.
- (C) उपरोक्त परिच्छेद 1(a) में बलाए गए अपील के अलावा वेब सभी अपीलें सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपील न्यायाधिकरण (निस्टैट) की पश्चिम क्षेत्रीय पीठ, , द्वितीय तल, भूमाली भवन असावा अहमदाबाद को की जानी चाहिए।/
To the West regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at, 2nd Floor, Bhaumali Bhawan, Asarwa Ahmedabad in case of appeals other than as mentioned in para- 1(a) above
- (D) अपील न्यायाधिकरण के समक्ष अपील प्रस्तुत करने के लिए केन्द्रीय उत्पाद शुल्क (अपील) नियमवली, 2001, के नियम 6 के अंतर्गत निर्धारित फॉर्म एच ई-3 को चार प्रतियों में दर्ज किया जाना चाहिए। इनमें से कम से कम एक प्रति के साथ, जहां उत्पाद शुल्क की सीमा असावा की सीमा और लगाया गया जुर्माना, ब्याज 5 लाख या उससे कम, 5 लाख ब्याज या 50 लाख ब्याज तक अथवा 50 लाख ब्याज से अधिक है तो क्रमशः 1,000/- रुपये, 5,000/- रुपये अथवा 10,000/- रुपये का निर्धारित जमा शुल्क की प्रति समस्त करें। निर्धारित शुल्क का भुगतान, संबंधित अपील न्यायाधिकरण की शाखा के सहायक रजिस्टार के नाम से किसी भी सार्वजनिक क्षेत्र के बैंक द्वारा जारी रेगुलर 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। स्थगन आदेश (स्टे ऑर्डर) के लिए आवेदन-पत्र के साथ 500/- रुपये 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 demand/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/-

- (E) अपील न्यायाधिकरण के समक्ष अपील, वित्त अधिनियम, 1994 की धारा 86(1) के अंतर्गत सेवाकर विधमवली, 1994, के नियम 9(1) के तहत निर्धारित फॉर्म S.T.-5 में चार प्रतियों में की जा सकती है एवं उसके साथ जिन आदेश के विरुद्ध अपील की गयी हो, उसकी प्रति साथ में समस्त करें (उनमें से एक प्रति प्रमाणित होनी चाहिए) और इनमें से कम से कम एक प्रति के साथ, जहां सेवाकर की सीमा असावा की सीमा और लगाया गया जुर्माना, ब्याज 5 लाख या उससे कम, 5 लाख ब्याज या 50 लाख ब्याज तक अथवा 50 लाख ब्याज से अधिक है तो क्रमशः 1,000/- रुपये, 5,000/- रुपये अथवा 10,000/- रुपये का निर्धारित जमा शुल्क की प्रति समस्त करें। निर्धारित शुल्क का भुगतान, संबंधित अपील न्यायाधिकरण की शाखा के सहायक रजिस्टार के नाम से किसी भी सार्वजनिक क्षेत्र के बैंक द्वारा जारी रेगुलर 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। स्थगन आदेश (स्टे ऑर्डर) के लिए आवेदन-पत्र के साथ 500/- रुपये 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) विल अपीलियम, 1994 की धारा 86 की उप-धाराओं (2) एवं (2A) के अंतर्गत दर्ज की गयी अपील, सेवाकर नियमावली, 1994, के विधम 9(2) एवं 9(2A) के तहत निर्धारित फॉर्म S.T.-7 में की जा सकती एवं उसके साथ अप्रकृत, केन्द्रीय उत्पाद शुल्क अधिका (अपील), केन्द्रीय उत्पाद शुल्क द्वारा पालित आदेश की प्रतियों संलग्न करे (इनमें से एक प्रति प्रामाणिक होनी चाहिए) और अप्रकृत द्वारा सहचरक अप्रकृत अधिका उपप्रकृत, केन्द्रीय उत्पाद शुल्क/सेवाकर, को अपीलिय न्यायाधिकरण को आवेदन दर्ज करने का निर्देश देने वाले आदेश की प्रति 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 अपीलिय न्यायाधिकरण (सेवाकर) के प्रति अपील के मामले में केन्द्रीय उत्पाद शुल्क अपीलियम 1944 की धारा 35एफ के अंतर्गत, जो की विलियम अपीलियम, 1994 की धारा 83 के अंतर्गत सेवाकर को भी लागू की गई है, इस आदेश के प्रति अपीलिय न्यायाधिकरण में अपील करने समय उत्पाद शुल्क/सेवा कर भाग के 10 प्रतिशत (10%), जब मूल एवं नुमांना विवादित है, या नुमांना, जब केवल नुमांना विवादित है, का भुगतान किया जाए, बशर्त कि इस धारा के अंतर्गत जमा कि जाने वाली अपीलिय देय राशि इस बरत स्थिति से अधिक न हो।
केन्द्रीय उत्पाद शुल्क एवं सेवाकर के अंतर्गत "आय किए गए शुल्क" में प्रिजम शामिल है।
(i) धारा 11 डी के अंतर्गत रकम
(ii) सेवाकर जमा की गयी गलत राशि
(iii) सेवाकर जमा नियमावली के विधम 6 के अंतर्गत देय रकम
- बशर्त यह कि इस धारा के प्रावधान विलियम (सं. 2) अपीलियम 2014 के आरंभ से पूर्व किसी अपीलिय न्यायाधिकरण के द्वारा विवादित न्यायन अपील एवं अपील को लागू नहीं होगी।
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 be 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 अधिक विस्तारित मामले में, केन्द्रीय उत्पाद शुल्क अपीलियम, 1994 की धारा 35EE के अध्याय परतक के अंतर्गत अपीलिय अधिक, भारत सरकार, पुनरीक्षण आवेदन इकाई, विलियम भवन, राजस विमान, चौथी मंजिल, जीवन टॉप भवन, संसद भवन, नई दिल्ली-110001, को किया जाता 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-35 ibid:
(i) यदि माल के किसी नुकसान के मामले में, जहां नुकसान किसी माल को किसी कारखाने से अंतर गृह के परतक के दौरान या किसी अन्य कारखाने या फिर किसी एक अंतर गृह से दूसरे अंतर गृह परतक के दौरान, या किसी अंतर गृह में या अंतर गृह से माल के परतक के दौरान, किसी कारखाने या किसी अंतर गृह से माल 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 माल के विनिर्माण में प्रयुक्त कच्चे माल पर भरी गयी केन्द्रीय उत्पाद शुल्क के छुट (रिबेट) के मामले में, जो भारत के बाहर किसी राष्ट्र या क्षेत्र को निर्यात की गयी है। / In case of rebate of duty of excise on goods exported to any country or territory outside India of an 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 माल 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 हनुडी सेइड इस अपीलियम एवं इसके विभिन्न प्रावधानों के तहत मान्य की गई है और ऐसे आदेश जो अप्रकृत (अपील) के द्वारा विलियम अपीलियम (सं. 2), 1998 की धारा 109 के द्वारा नियत की गई तरीक अथवा समतुल्य पर या बट में पालित 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 उत्पाद शुल्क (अपील) नियमावली, 2001, के विधम 9 के अंतर्गत विनिर्दिष्ट है, इस आदेश के संश्लेषण 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 अपीलियम, 1944 की धारा 35-EE के तहत निर्धारित शुल्क की अदायगी के साथ-साथ 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 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.
(vi) पुनरीक्षण आवेदन के साथ निम्नलिखित निर्धारित शुल्क की अदायगी की जानी चाहिए।
जहां 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 संम से किया जाना चाहिए। इस संघ के होते हुए भी की निष्ठा परी काल से बचने के लिए यथासंभव अपीलिय 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 Appellate Tribunal or the one application to the Central Govt. As the case may be, is filed to avoid scripatoria work of excising Rs. 1 lakh fee of Rs. 100/- for each.
- (E) यथासंभवित न्यायालय शुल्क अपीलियम, 1975, के अनुसूची-1 के अनुसार मूल आदेश एवं न्यायन आदेश की प्रति पर निर्धारित 6.50 रुपये का न्यायालय शुल्क टिकट अंग 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-I in terms of the Court Fee Act, 1975, as amended.
- (F) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलिय न्यायाधिकरण (सर्वे विधि) नियमावली, 1982 में उल्लिखित 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 अपीलिय न्यायाधिकरण को अपील दाखिल करने से संबंधित व्यापक, विस्तृत और नवीनतम प्रावधानों के लिए, अपीलिय विस्तृत वेबसाइट 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 appellants may refer to the Departmental website www.cbec.gov.in

:: ORDER-IN-APPEAL ::

M/s. Tirth Agro Technology Pvt. Ltd., "Shaktiman", Survey No. 108/1, Plot No. B, NH-27, Nr. Bharudi Toll Plaza, Bhunava (Village), Taluka – Gondal, Dist. Rajkot (hereinafter referred to as "the appellant") filed the present appeal against the Order-in-Original No. 44/ST/REF/2016 dated 27.04.2016 (hereinafter referred to as "the impugned order") passed by the Assistant Commissioner, Service Tax Division, Rajkot (hereinafter referred to as "the lower adjudicating authority").

2. Briefly stated, the facts of the case are that the appellant filed refund claim for Rs. 2,13,866/- being the service tax paid by them to their service provider, namely, M/s. Shree Shakti Caterers, Rajkot for the services provided in relation to serving of food or beverages in their canteen within the factory premises of the appellant, in terms of Notification No. 14/2013-ST dated 22.10.2013. The adjudicating authority vide impugned order has rejected the refund claim on the ground that as per the said notification, exemption is available in cases where the services are provided by canteen to staff/employees of the factory and charges are recovered from the staff and not to an outdoor caterer who provides services to a canteen; and also on the ground that the appellant has not furnished any documentary evidence providing that they have borne the burden of service tax.

3. Being aggrieved by the impugned order, the appellant filed the present appeal, *inter alia*, on the grounds that the refund claim has been rejected on a ground which was never intimated to them; that the observation was not raised in any query memo issued by the department, therefore they could not furnish legitimate reasons/explanation; that no show cause notice was issued to them; that no personal hearing was offered by the adjudicating authority the hearing proposed on 25.04.2016 was before the Superintendent; that the impugned order has been passed ex-parte without offering them adequate opportunity to present that case in defiance to the settled principles of law. Regarding non-admissibility of their refund claim in terms of Noti.No. 25/2012-ST dated 20.06.2012. It was submitted that exemption is for the services provided by a canteen maintained in a factory covered under the Factories Act, 1948 (63 of 1948) vide Entry 19A under Noti.No. 14/2013-ST dated 22.10.2013; that it is not disputed that appellant is registered under the Factories Act, 1948; that it is also not disputed that the services in relation to serving of food and beverages were provided by the canteen maintained in the factory of the appellant; that once both these conditions are satisfied, exemption

from payment of service tax is available and since in the instant case, service tax was collected from the appellant the appellant had filed refund of service tax paid for such services; that the notification nowhere prescribes that exemption from payment of service is available if charges are recovered from the staff and exemption is not available if outdoor caterer provides services to a canteen; it also does not stipulate that services of serving food and beverages must be provided in a canteen by factory owner only.

3.1 It has been submitted that the refund claim, as stated in para 10 of the impugned order, has been rejected on the ground that appellant had not furnished any documentary evidence proving that burden of service tax was borne by it/not passed on to any other person; that the appellant had provided lunch and dinner by charging only token price of Rs. 5/- whereas tea was provided free of charge to its employees; that the appellant had paid Rs. 38/- per plate (for lunch or dinner) to the service provider plus VAT and service tax; that the appellant submitted ledger account of canteen expenses for the disputed period and also submitted copy of the Auditor's certificate date 23.06.2016, *inter alia*, certifying therein that it had not passed on incidence of service tax to their employees or any other person and the same was borne by the company. The appellant relied on the decisions in the case of Sunraj Construction – 2014 (35) STR 108 (Tri.-Mumbai) and Gujarat Chemical Port Terminal Co. Ltd. – 2008 (12) STR 564 (Tri.-Ahmd.) in support of their contention.

3.2 The appellant submitted that the amount was mistakenly paid as service tax, consequently, amount assessed as service tax cannot be categorized as valid sum of service tax and therefore, not covered by Section 11B, which relates to cases of refund of duty/service tax and only such other sums as have been specified therein; that in fact, the present case is in nature of an error apparent on the part of the appellant, which was simply required to be rectified by refund of the said amount; that this contention is supported by ratio of decision rendered in the case of Balaji Fasteners – 1990 (46) ELT 543 (Tribunal). The appellant further submitted that the adjudicating authority had sanctioned their similar refund claims of service tax for the period Oct-2014 to March-2015; that despite the fact that there was no difference in facts and circumstances of this claim from earlier, the adjudicating authority rejected this claim taking conflicting views while adjudicating this refund claim whereas earlier claims were sanctioned.

शुभर सिंह
12/7/2017

4. Personal hearing in the matter was held on 22.06.2017, which was attended to by Shri P.D. Rachchh, Advocate, who reiterated Grounds of Appeal and submitted that policy of company was to recover nominal charge of Rs. 5/- only per meal from employees from salary for lunch/dinner, which is without service tax, sales tax, etc. and breakfast was being given free. He made additional submission dated 23.06.2017 also wherein he again reiterated the contentions made in Grounds of Appeal and emphasized that Mega Notification No. 25/2012-ST dated 20.06.2012 did not exempt services of serving food or beverages by a canteen maintained in a factory but the same was exempted from payment of service tax vide Entry No. 19A vide Notification No. 14/2013-ST dated 22.10.2013 as under:

"19A. Services provided in relation to serving of food or beverages by a canteen maintained in a factory covered under the Factories Act, 1948 (63 of 1948), having the facility of air-conditioning or central air-heating at any time during the year."

Hence, the appellant was not required to pay service tax of Rs. 2,13,866/- on the services provided by M/s. Shree Shakti Caterers, Rajkot for serving food and beverages in its canteen during period from April,2015 to May,2015.

Findings:-

5. I have carefully gone through the facts of the case, the impugned order, appeal memorandum and the submissions of the appellant. The limited issue to be decided in the present appeal is whether the rejection of claim of refund of the amount of service tax paid by them to the service provider in respect of services provided in relation to serving of food and beverages in their by service provider, is correct or otherwise.

6. I find that the adjudicating authority has denied the refund of service tax paid by the appellant to the service provider on the ground that Notification No. 14/2013-ST dated 22.10.2013 *supra*, is applicable in cases where the services are provided by appellant's canteen to staff/employees of the appellant factory and charges are recovered from the staff and not when services are provided by the outdoor caterer to a canteen and also on the ground that the appellant has not furnished documentary evidences proving that they have borne the burden of service tax.

કચ્છીયર ળીવ
૨૨/૬/૨૦૧૭

6.1 The appellant has strongly pleaded that the exemption from payment of service tax under Notification No. 14/2013-ST dated 22.10.2013 is for the services provided in relation to serving of food or beverages by a canteen maintained in a factory covered under the Factories Act, 1948 (63 of 1948) irrespective of the fact to whom the services are provided. It has also been contended that the appellant is registered under the Factories Act, 1948 and that services in relation to serving of food and beverages were provided by their canteen maintained in the factory of the appellant. I find that M/s. Shree Shakti Caterers have been awarded the contract to provide services of managing and running the canteen in terms of agreement dated 12.12.2013, who have charged the amount of service tax for the said services provided during April/May-2015. I find that the services provided in relation to serving of food or beverages by a canteen maintained in a factory covered under the Factories Act, 1948 (63 of 1948), were exempted vide Notification No. 14/2013-ST dated 22.10.2013. The appellant is maintaining their canteen through M/s. Shree Shakti Caterers and they were entitled to avail the benefit of exemption, as they provided services in relation to serving of food & beverages by a canteen maintained in a factory of the appellant covered under the Factories Act, and the canteen is/was having the facility of air-conditioning. The above facts are not under dispute. Therefore, I hold that the services provided by M/s. Shree Shakti Caterers are exempted and the appellant, being the service receiver, is entitled for refund of service tax paid by them as they have paid the amount of service tax to the service provider, who has deposited the service tax with the Government.

7. The appellant has submitted copy of ledger account in their Appeal Memorandum which reflects that the amount of service tax paid by them to the service provider, has been accounted for in their expenses account; they also submitted copy of certificate dated 23.06.2016 issued by Chartered Accountant certifying that the entire amount inclusive of service tax is charged to profit & loss account and that the incidence of service tax is not passed on to the employees or any other person. However, I find that the appellant had not submitted these documents before the adjudicating authority and hence no findings could be made by him in this regard.

7.1 The appellant has vehemently argued that the refund claim has been rejected by lower adjudicating authority on a ground (non furnishing of documents) which was never intimated to them; that this ground was not raised in any of the query memo issued by the Division; that no show cause notice and

शक्ति कैंटर
12/12/2013

personal hearing was offered by the adjudicating authority. This claim of the appellant needs to be examined by me. I find that after receiving refund claim, query memo was issued on 01.03.2016 to the appellant to provide complete set of documents which appears to have been complied with by the appellant. Another query memo was issued to the appellant on 04.04.2016 to provide the documentary evidence that they have borne the burden of service tax. However, the lower adjudicating authority has decided the refund claim vide impugned order dated 27.04.2016 without waiting for the documents. I also find that no show cause notice was issued to the appellant proposing rejection of refund claim. I further find that no record of personal hearing has been stated in the impugned order clearly implying that no personal hearing was given/recorded. It is settled legal position that the refund claim cannot be rejected without show cause notice and without affording opportunity to the appellant to defend their case. Thus, I find that the adjudicating authority has not followed the principles of natural justice and therefore the impugned order passed by the adjudicating authority cannot be allowed to be sustained. I find that Hon'ble High Court of Madras in the case of J.A. Motor Sport reported as 2017 (345) ELT 205 (Mad.) held as under:-

"7. This is so, because issuance of a show cause notice is not empty formality, but a statutory requirement and a requirement should be complied with by the Authority to satisfy the principles of natural justice. If the Authority has pre-judged the issue at the stage of a show cause notice, the submission of the reply to the show cause notice itself would become a farce."

7.2 The Hon'ble CESTAT, New Delhi in the case of Eicher Tractors reported as 2002 (147) E.L.T. 457 (Tri. - Del.) held as under:-

"7. Apart from the above, it appears that the show-cause notice dated 18-4-2000 was issued to the party only to call upon them to defend their refund claim against the bar of unjust enrichment. There was no suggestion in the notice that it was not legal or proper to grant cash refund of duty through Modvat account. Ld. Commissioner (Appeals) held that the refund claim was not hit by unjust enrichment, but yet rejected the claim on the ground that it was not legal or proper to grant cash refund through Modvat account. This ground being alien to the show cause notice, the impugned order requires to be set aside as violative of natural justice."

7.3 The Hon'ble CESTAT, Hyderabad in the case of Xilinx India Technology Services (P) Ltd. reported as 2016 (44) S.T.R. 129 (Tri. - Hyd.) held as under:-

"6. I have considered the submissions made by both sides carefully. At the outset, it has to be stated that no show cause notice was issued to the appellant."

Without issuing such notice, the appellant has been deprived an opportunity to defend his case effectively. This is blatant violation of the Principles of Natural Justice."

8. In view of the above facts and circumstances of the case, I am of the considered view that the impugned order passed by the lower adjudicating authority can't be validated in the eyes of law and accordingly the same is set aside. The lower adjudicating authority is directed to examine all relevant documents and to pass a speaking order keeping the relevant notification and provisions of Central Excise Act as made applicable to the matters of service tax and after taking into consideration the submissions made by the appellant in their appeal memorandum as discussed in para 6, 6.1 & 7. The appellant is also directed to produce all relevant data and required documents to the Adjudicating authority to arrive at a fair conclusion. I, therefore, set aside the impugned order and remand the case back to the lower adjudicating authority to pass a speaking order as per law.

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

9. The appeal filed by the appellant stands disposed off in above terms.

कुमार संतोष
12/11/2017
(कुमार संतोष)
आयुक्त (अपील्स)

By Speed Post

To,
M/s. Tirth Agro Technology Pvt. Ltd.,
"Shaktiman", Survey No. 108/1,
Plot No. B, NH-27,
Nr. Bharudi Toll Plaza,
Bhunava (Village), Taluka – Gondal,
Dist. Rajkot

मे. तीर्थ ऐग्रो टेक्नोलोजी प्रा. लिमिटेड,
"शक्तिमान", सर्वे न. १०८/१,
प्लॉट नं. बी, एन.एच. २७,
भरुडी टोल प्लाज़ा नजदीक,
तालुका - गोडल, डिस्ट्रिक्ट - राजकोट

Copy to:

- 1) The Chief Commissioner, CGST & Central Excise, Ahmedabad.
- 2) The Principal Commissioner, CGST & Central Excise, Rajkot.
- 3) The Assistant Commissioner, CGST & Central Excise Division-II, Rajkot.
- 4) The concerned Range Superintendent, CGST & Central Excise, Rajkot
- 5) Guard file.