::आयुक्त (अपील्स) 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 स / O.I.O. No. | दिनांक / Date |
|---|---|---|---|
| | **V2/14 /GDM/2017** | **24/JC/2016** | **30-11-2016** |
| | **V2/15 /GDM/2017** | **25/JC/2016** | **30-11-2016** |

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

**KCH-EXCUS-000-APP-074-TO-075-2018-19**

| आदेश का दिनांक / Date of Order: | **12.07.2018** | जारी करने की तारीख / Date of issue: | 16.07.2018 |
|---|---|---|---|

Passed by **Shri Sunil Kumar Singh, Commissioner, CGST & Central Excise, Gandhinagar.**

अधिसूचना संख्या २६१७ दिनांक (.टी.एन) .शु.उ.के-२०१७/.१० २०१७.के साथ पढे बोर्ड ऑफिस आदेश स . दिनां .टी.एस-२०१७/०५क १६के अनुसरण में २०१७.११., श्री सुनील कुमार सिंह आयुक्त, केंद्रीय वस्तु एवं सेवा कर एवं केन्द्रीए उत्पाद शुल्क,, गांधीनगर, को वित्त अधिनियम १९९४ की धारा८५केंद्रीय उत्पाद शुल्क , के ३५ की धारा १९४४ अधिनियमअंतर्गत दर्ज की गई अपीलों के सन्दर्भ में आदेश पारित करने के उद्देश्य से अपील प्राधिकारी के रूप में नियुक्त किया गया है.

In pursuance to Board's Notification No. 26/2017-C.Ex.(NT) dated 17.10.217 read with Board's Order No. 05/2017-ST dated 16.11.2017, Shri Sunil Kumar Singh, Commissioner, CGST & Central Excise, Gandhinagar, has been appointed as Appellate Authority for the purpose of passing orders in respect of appeals filed under Section 35 of Central Excise Act, 1944 and Section 85 of the Finance Act, 1994.

ग अपर आयुक्त/ संयुक्त आयुक्त/ उपायुक्त/ सहायक आयुक्त, केन्द्रीय उत्पाद शुल्क/ सेवाकर, राजकोट / जामनगर / गांधीधाम/ भावनगर। द्वारा उपरलिखित जारी मूल ओदेश से सृजित: /
Arising out of above mentioned OIO issued by Additional/Joint/Deputy/Assistant Commissioner, Central Excise / Service Tax, Rajkot / Jamnagar / Gandhidham/ Bhavnagar :

घ **अपीलकर्ता &** प्रतिवादी का नाम एवं पता /Name & Address of the **Appellants** & Respondent :-

**M/s Ruchi Soya Ind. Ltd.,, 221/1-3, Survey No. 217/2,218/2,219/1-3,220.,, Mithirohar,. Gandhidham 370 201,**

इस आदेश(अपील) से व्यथित कोई व्यक्ति निम्नलिखित तरीके में उपयुक्त प्राधिकारी / प्राधिकरण 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 अपीलीय 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 सम्बन्धित सभी मामले सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय 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 बताए गए अपीलों के अलावा शेष सभी अपीलें सीमा शुल्क, केंद्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, , द्वितीय तल, बहुमाली भवन असावी अहमदाबाद- ३८००१६ को की जानी चाहिए ।/
To the West regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at, 2nd Floor, Bhaumali Bhawan, Asarwa Ahmedabad-380016 in case of appeals other than as mentioned in para- 1(a) abo

(iii) अपीलीय न्यायाधिकरण के समक्ष अपील प्रस्तुत करने के लिए केन्द्रीय उत्पाद शुल्क (अपील) नियमावली, 2001, के नियम 6 के अंतर्गत निर्धारित किए गये प्रपत्र EA-3 को चार प्रतियों में दर्ज किया जाना चाहिए । इनमें से कम से कम एक प्रति के साथ, जहां उत्पाद शुल्क की माँग ,ब्याज की माँग और लगाया गया जुर्माना, रुपए 5 लाख या उससे कम, 5 लाख रुपए या 50 लाख रुपए तक अथवा 50 लाख रुपए से अधिक है तो क्रमश: 1,000/- रुपये, 5,000/- रुपये अथवा 10,000/- रुपये का निर्धारित जमा शुल्क की प्रति संलग्न करें। निर्धारित शुल्क का भुगतान, संबंधित अपीलीय न्यायाधिकरण की शाखा के सहायक रजिस्टार के नाम से किसी भी सार्वजिनक 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 अपीलीय न्यायाधिकरण की शाखा स्थित है । स्थगन 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 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/-.

(B) अपीलीय न्यायाधिकरण के समक्ष अपील वित्त अधिनियम, 1994 की धारा 86(1) के अतगत सेवाकर नियमवाली, 1994, के नियम 9(1) के तहत निर्धारित प्रपत्र S.T.-5 में चार प्रतियों में की जा सकेगी एवं उसके साथ जिस आदेश के विरुद्ध अपील की गयी हो, उसकी प्रति साथ में संलग्न करें (उनमें से एक प्रति प्रमाणित होनी चाहिए) और इनमें से कम से कम एक प्रति के साथ, जहां सेवाकर की माँग ,ब्याज की माँग और लगाया गया जुर्माना, रुपए 5 लाख या उससे कम, 5 लाख रुपए या 50 लाख रुपए तक अथवा 50 लाख रुपए से अधिक है तो क्रमश: 1,000/- रुपये, 5,000/- रुपये अथवा 10,000/- रुपये का निर्धारित जमा शुल्क की प्रति संलग्न करें। निर्धारित शुल्क का भुगतान, संबंधित अपीलीय न्यायाधिकरण की शाखा के सहायक रजिस्टार के नाम से किसी भी सार्वजिनक 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 अपीलीय न्यायाधिकरण की शाखा स्थित है । स्थगन आर्देश (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 दर्ज की गयी अपील, सेवाकर नियमवाली, 1994, के नियम 9(2) एवं 9(2A) के तहत निर्धारित प्रपत्र S.T.-7 में की जा सकेगी एवं उसके साथ आयुक्त, केन्द्रीय उत्पाद शुल्क अथवा आयुक्त (अपील), केन्द्रीय उत्पाद शुल्क द्वारा पारित आदेश की प्रतियाँ संलग्न करें (उनमें से एक प्रति प्रमाणित होना चाहिए) और आयुक्त द्वारा सहायक आयुक्त अथवा उपायुक्त, केन्द्रीय उत्पाद शुल्क/ सेवाकर, को अपीलीय न्यायाधिकरण को आवेदन दर्ज करने का निर्देश देने वाले आदेश की प्रति भी साथ में सलग्न करनी होगी । ,

The appeal under sub section (2) and (2A) of the section 86 the Finance Act 1994, shall be filed in For 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) वित्त अधिनियम, 1994 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 करते 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, बशर्ते 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" मे निम्न शामिल है

(i) धारा 11 डी के अंतर्गत वसूल
(ii) सेनवेट जमा की ली गई गलत राशि
(iii) सेनवेट जमा नियमावली के नियम 6 के अंतर्गत देय रकम

- बशर्ते यह कि इस धारा के प्रावधान वित्तीय (सं. 2) अधिनियम 2014 के आरंभ से पूर्व किसी अपीलीय प्राधिकारी के समक्ष विचाराधीन स्थगन अर्ज़ी एवं अपील को लागू नहीं होगे।/

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 याचिका निम्नलिखित मामलो में, केंद्रीय उत्पाद शुल्क अधिनियम, 1994 की धारा 35EE के प्रथम परंतुक के अंतर्गत अवर सचिव, भारत सरकार, पुनरीक्षण आवेदन ईकाई, वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दीप 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 माल के किसी नुकसान के मामले में, जहां नुकसान किसी माल को किसी कारखाने से भडार गृह के पारगमन के दौरान या किसी अन्य कारखाने या फिर किसी एक भंडार गृह से दूसरे भडार गृह पारगमन के दौरान, या किसी भंडार गृह में या भंडारण में माल के प्रसंस्करण के दौरान, किसी कारखाने या किसी भंडार गृह में 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 अरी गई 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 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 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 ड्यूटी क्रेडीट इस अधिनियम एवं इसके विभिन्न प्रावधानों के तहत मान्य की गई है और ऐसे आदेश जो आयुक्त (अपील) के द्वारा वित्त अधिनियम (न. 2), 1998 की धारा 109 के द्वारा नियत की गई तारीख अथवा समायाविधि पर या बाद में पारित किए गए है।/
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 प्रपत्र संख्या EA-8 में, जो की केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001, के नियम 9 के अंतर्गत विनिर्दिष्ट है, इस आदेश के संप्रेषण 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 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 ।
जहाँ संलग्न रकम एक लाख रूपये या उससे कम है तो रूपये 200/- का भुगतान किया जाए और यदि संलग्न रकम एक लाख रूपये से ज्यादा हो तो रूपये 1000 -/ का भुगतान किया जाएँ ।
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 आदेशो का समावेश है तो प्रत्येक मूल आदेश के लिए शुल्क का भुगतान, उपयेक्त ढंग से किया जाना चाहिये। इस तथ्य के होते हुए भी की लिखा पेढी कार्य से बचने के लिए यथास्थिति अपीलीय नयाधिकरण को एक अपील या केंद्रीय 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 scriptoria work if excising Rs. 1 lakh fee of Rs. 100/- for each.

(E) यथासंशोधित न्यायालय शुल्क अधिनियम, 1975, के अनुसूची-I के अनुसार मूल आदेश एवं स्थगन आदेश की प्रति पर निर्धारित 6.50 रुपये का न्यायालय शुल्क टिकिट 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-I in terms of the Court Fee Act,1975, as amended.

(F) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्य विधि) नियमावली, 1982 में वर्णित एवं अन्य संबन्धित मामलों को सम्मिलित करने वाले नियमों की ओर 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 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

**Order In Appeal**

| Sr. No. | Name of the Appellants | Address | Appeal No. | OIO No. |
|---|---|---|---|---|
| 01 | M/s Ruchi Soya Ind. Ltd. (Appellant) | 221/1-3,Survey No. 217/2,218/2,219/1-3,220, Mithirohar, Gandhidham 370201. | 14/GDM/2017 dated 02.02.2017 | 24/JC/2016 dated 30.11.2016 |
| 02. | -- do - | | 15/GDM/2017 dated 02.02.2017 | 25/JC/2016 dated 30.11.2016 |

The present appeals have been filed by the above mentioned appellant against above mentioned Orders in Original (hereinafter referred to as 'the impugned order') passed by the Joint Commissioner, Central Excise and Service tax, Gandhidham (hereinafter referred to as 'Adjudicating Authority'). Since the relevant issue is common, both appeals are hereby taken up for common decision.

**2.** The facts of the case in brief are that the during the course of verification of books of account of the Appellant by the Audit officers, it was observed that the Appellant has received services from Goods Transport Agency for transportation of imported goods viz. 'Crude Palm Oil', 'Crude Sunflower Oil', 'Crude Soyabean Oil' 'Crude Rapeseed Oil' etc. from Port to their factory premises. On scrutiny of the records of the Appellant for the period from April, 2013 to Sept., 2014 and Oct, 2014 to March, 2015, it was found that the Appellant had not discharged their Service Tax liability on the GTA service. Accordingly, following Show Cause Notices were issued to the appellant.

| Sl.No | SCN No. | Period involved | Service tax demanded(Rs.) | Issued by |
|---|---|---|---|---|
| 1 | V.ST/15-02/Audit-III/Commr/2/2015-16 dated 9.7.2015 | 1.4.2013 to 30.9.2014 | 1,05,15,303 | Commissioner |
| 2 | V.ST/AR-II-GDM/Jt.Commr./22/2016-17 dated 14.10.2016 | 1.10.2014 to 31.3.2015 | 73,42,373 | Jt.Commisioner. |

**3.** The Adjudicating Authority, vide his order-In-Original No. 24/JC/2016 and 25/JC/2016 both dated 30.11.2016 have confirmed both service tax demands of Rs. 1,05,13,303/- and Rs. 73,42,373/-, respectively. The

Adjudicating Authority has also imposed penalty of Rs. 1,05,13,303/- and Rs. 73,42,373/- under provision of Section 78 of the Finance Act, 1994 and penalty of Rs. 10,000/- and Rs. 10,000/- under provisions of Section 77 of the Finance Act, 1994 in respect of both demands, respectively.

4. Being aggrieved with the impugned order, the aforementioned appellants have filed the present appeals on the following grounds

**Grounds of Appeal**

**4.1** As regards OIOs No. 24/JC/2016 and No. 25/JC/2016 both dated 30.11.2016, the Appellant has interalia contended as under:-

(i) The reliance has been placed on the definition of "Edible oil" as per The Pulses, Edible Oil seed and Edible oils (Storage and Control) Order, 1977 and Edible oils Packaging (Regulations) Order, 1998 issued under Essential Commodities Act 1955 (10 of 1955)(Orders). These Orders have been repealed with effect from 5.08.2011. Thus, the Order under which the definitions were relied no longer existed since 5.08.2011 and the current period of dispute relates to the Financial year 2013-14. Thus, the definitions no longer can be used to base upon the allegations as in the Show Cause Notice and demand of tax under OIO.

(ii) Under FSSR(Food Safety Standard Regulation,2011) there is no definition of Edible oil as was under the repealed provisions of Orders. The definition of edible oil can be inferred by referring the definition of Vegetable Oil and Vegetable Oil products as per FSSR. The reason to refer vegetable oil product definition can be derived from the definition of Edible oil as under the now repealed Edible Oils Packaging (Regulations) Order 1998, wherein edible oil meant vegetable oil and fats..... It can be observed that nowhere in the-above mentioned definition there has been any stress upon the point of human consumption. The necessary condition of human consumption is stipulated only for complying with the main intention of FSSA and FSSR. The fulfillment of condition of human consumption is a criterion to differentiate between the usage of such edible oil or vegetable oil i.e. whether the usage of the same is for edible purposes or industrial purposes.

(iii) Circular No.29/97 dated 31.07.1997 of the CBEC provides that even if at the time of import, oil is inedible, exemption would be available, if after refining it was used as edible oil.

(iv) The aim of the Notification No. 25/2012-ST as amended with Notification No. 3/2013-ST under Service tax law and circular under the Customs law have to be seen together to import the meaning as both the stipulations work for same objective to provide benefit to the importers of edible crude oil. Legislative history establishes rationale of stipulating edible grade whereby it excludes oil for industrial application. Edible condition need

to be satisfied, in the case of imported oil, after refining in India. In the present case the imported oil was indeed edible grade after importation and after refining, it has been sold for human consumption.

(V) They placed reliance on the judgment of the Hon'ble High Court of Gujarat in the case of Cargill India Pvt. Ltd. Versus Union Of India, 2013 (288) E.L.T. 209 (Guj.) wherein the benefit of exemption Notification 21/2002-cus dated 1.3.2003 was extended to the imported crude palm oil of edible grade. It is submitted that the above mentioned judgement read in light of the Circular 29/97, clearly allows goods imported in crude form of edible grade the exemption. Thus, the same principle or treatment needs to be adopted for allowing exemption under Service tax law as the ultimate purpose under both the laws remains similar.

(vi) The Appellants submit that the OIO failed to appreciate that the exemption Notification No. 25/2012-ST dated 20.06.2012 as amended vide Notification No. 03/2013-ST dated 1.03.2013 (hereinafter referred to as "Notification No. 3/2013-ST") grants exemption in respect of services, provided by a Goods Transport Agency, by way of transportation of EDIBLE OIL, in a goods carriage. From the plain reading of the relevant extracts of the Notification No. 3/2013-ST as provided above it can be seen that the nowhere in the Notification No. 3/2013 it has been stated that the EDIBLE OIL should be either "REFINED" or "NON-REFINED". There is no qualification with regards to refined or non-refined before "Edible Oils". In other words, it can be construed that the benefit of the exemption vide respect to Notification No. 25/2012-ST dated 20.06.2012 as amended vide Notification no. 3/2013-ST dated 1.03.2013 in respect of services of transportation by goods transport agency can be availed for all types of EDIBLE OILs, without any such qualification. Therefore, the finding in the OIO regarding the meaning of edible oil which is fit for human consumption would only be eligible for exemption has no substance and based on this baseless ground alone the demand under OIO is liable to be dropped.

(vii) Denial of Abatement under Notification 26/2012-ST. dated 20.06.2012 is unsustainable:- The Appellants submit that the OIO failed to appreciate that the Central Board of Excise and Customs vide D.O. letter F.No. 334/15/2014-TRU dated 10.7.2014 (Board Circular) had clarified that the condition for availing abatement, in case of goods transport services for non-availment of credit, is required to be satisfied by the service providers only. Service recipient are not required to establish satisfaction with regards to same. The Board Circular provides clarification with effect from 11.7.2014 (Notification No. 8/2014-ST)with respect to the responsibility to be undertaken for availing benefit of abatement in case of goods transport agency services. This clarification is to provide a clear meaning to the condition so prescribed in the Notification No. 26/2012-ST which was already

implicit. Also it is well settled law that a clarificatory amendment of this nature will have retrospective effect.

(viii) The onus to prove or satisfy the condition of non-availment of credit always depended upon the service provider and not the service receiver. Also, it is the Department that has objections with regards to the same. Thus, the burden to satisfy compliance of such condition as stipulated in Notification No. 26/2012-ST is upon the Department and not the Appellants.

(ix) The Appellants submit that it is not the responsibility of the Service receiver i.e. the Appellants to provide for any evidence or proof for such condition. However, the Appellants submit that they are in possession of Certificates from the GTA service providers duly declaring the non-availment of cenvat credit from them. Under such scenario the Appellants are duly entitled to avail the benefit of abatement by virtue of the Abatement Notification No. 26/2012-ST. Reliance is placed upon the ratio as laid down in the case of Commr. Of Service Tax, Ahmedabad Versus Cadila Pharmaceuticals Ltd.,2012 (27) S.T.R. 127 (Guj.), wherein the Hon'ble High court held that abatement of 75%of the gross amount on the basis of the general declarations filed by the respective Goods Transport Agencies could not be denied. Therefore, the OIO denying the benefit of abatement under Notification No. 26/2012-ST to the Appellants as no evidence was placed for compliance of condition of non availment cenvat credit by service provider is unsustainable. In view of the above, if at all service tax is payable, the demand would work out to Rs. 26,28,825/- in place of Rs. 1,05,15,303/-.

(x) Extended period of limitation is not invocable:- The Appellants submit that they were and are under bonafide belief in view of the submissions made above, that the crude oil of edible grade so imported are for edible purposes and would get the benefit of exemption as has been provided in the Circular 29/97-Cus and the decisions referred supra. Also the Appellants strongly rely that nowhere in the amended Notification No. 3/2013-ST dated 1.03.2013 there is any specification as to refined or unrefined oil. Further the Appellants have been allowed import of said crude oil of edible grade in bulk on verification and proper examination after passing bills of entry bearing correct and proper description of such goods. Thus, there was no wilful suppression with an intention to evade duty. Without any deliberate intention to withhold/ suppress information from the Department, invocation of the extended period of limitation cannot be justified. In the present case, the Appellants have not committed any positive act to suppress information from the Department with the intent to evade payment of service tax.

(xi) Issue involves bona fide interpretation of law: It is submitted that, as demonstrated above, the present issue involves interpretation of complex

legal provisions. Therefore, imposition of penalty is not warranted in the present case.

(xii) Interest is not chargeable and penalties under Sections 77 & 78 of Finance Act, 1994 are not imposable:- The OIO has confirmed interest under section 75 of the Finance Act, 1994 on the service tax allegedly not paid by the Appellants and has also upheld penalties on the Appellants under Sections 77 and 78 of the Finance Act, 1994.

Since no tax is recoverable, as stated in the foregoing paragraphs, the question of recovery of interest does not arise. Therefore, the OIO confirming demand of interest is liable to be set aside.

(xiii) It is submitted that Section 77 of the Finance Act, 1994 provides for penalty for contravention of rules and provisions of the Finance Act, 1994. The Rules and Provisions of the Act require the appellants to itself assess its liability and file the returns accordingly in the prescribed form and within the prescribed time period with the Department. It is submitted that for imposing penalty, there should be an intention to evade payment of tax, or there should be suppression or concealment. The penal provisions are only a tool to safeguard against contravention of the rules. The Appellants had no intention to evade payment of service tax as mentioned in the grounds above. Therefore, no penalty is imposable on the appellants. It is submitted that penalty under Section 78 of the Finance Act, 1994 can be imposed only for reasons identical to those required for invoking extended period of limitation. As discussed under the earlier ground, the appellants have never suppressed any fact with an intention to evade payment of service tax. Therefore, penalty under Section 78 of the Act cannot be imposed.

(xiv) Section 80 of the Finance Act, 1994 is in favour of the Appellants. :- Section 80 of the Act, as it existed during the period in dispute provides that no penalty shall be imposed on the assessee for any failure referred to in Sections, 77 or 78 of the Finance Act, 1994 if the assessee proves that there was reasonable cause for the said failure. Thus, the Finance Act, 1994 statutorily provides for waiver of penalty. In the present case, there was a bonafide belief on part of the Appellants that the impugned activities were not subject to service tax, based on the detailed grounds given above. Therefore, there was reasonable cause for failure, if any, on part of the Appellants to pay service tax and to file service tax return. Hence, in terms of Section 80 of the Finance Act,1994 penalties cannot be imposed under Sections 77 and 78 of the Finance Act, 1994.

(xv) The Appellant has quoted several citations in support of their claim. And lastly, the Appellant has prayed that the Hon'ble Commissioner (Appeals) may be pleased to -

(a) Set aside the Order-in-Original No. 24/JC/2016dated 30.11.2016 passed by the Ld. Joint Commissioner, Central Excise & Service Tax, Ghandhidham and allow the appeal in full with consequential relief to the Appellants;

(b) Set aside the Service Tax demand of Rs. 1,05,15,303/-, interest and penalty under Sections 77 and 78 of the Finance Act, 1994 confirmed against the Appellants;

© Set aside the Order-in-Original No. 25/JC/2016dated 30.11.2016 passed by the Ld. Joint Commissioner, Central Excise & Service Tax, Ghandhidham and allow the appeal in full with consequential relief to the Appellants;

(d) Set aside the Service Tax demand of Rs. 73,42,373/-, interest and penalty under Sections 76 and 77 of the Finance Act, 1994 confirmed against the Appellants;

(e) Grant a personal hearing; and

(f) Pass such other order or orders as may be deemed fit and proper in the facts and circumstances of the case.

**5.** Personal hearing in the matter was held on 10.05.2018 in both cases, which was attended by Shri Jigar Shah Consultant of the appellant. He appeared and reiterated the point taken in their grounds of appeal.

**6.** In pursuance to Board's Notification No. 26/2017-C.Ex.(NT) dated 17.10.217 read with Board's Order No. 05/2017-ST dated 16.11.2017, I, Sunil Kumar Singh, Commissioner of CGST & Central Excise, Gandhinagar have been appointed as Appellate Authority for the purpose of passing orders in respect of appeals filed under Section 35 of Central Excise Act, 1944 and Section 85 of the Finance Act, 1994. Hence, in view thereof, I take this appeal for decision.

**7.** I have carefully gone through the impugned order passed by adjudicating authority, the submission made by the appellant in the appeal memorandum as well as by the consultant at the time of personal hearing. I find that I have two main issues to be decided in the present appeals **(i)** as to whether the Appellant was entitled to avail exemption under Notification No. 03/2013-ST dated 01.03.2013 and hence not liable for payment of service tax under Goods Transport Agency for transport of their raw material i.e., crude oils by road? **(ii)** and whether or not the benefit of abatement under notification No. 26/2012-ST dated 20.06.2012 was available to the Appellant and **(iii)** whether they are liable for penalty under the provisions of the Finance Act,1994 or not ?.

8. Now, I come to the issue N0. 1. I find that that the Appellant has received services from the Goods Transport Agency for transportation of goods viz., 'Crude Palm Oil', 'Crude Soyabean Oil' 'Crude Repressed Oil' etc. from port to their factory premises and has not paid service tax under reverse charge mechanism claiming benefit of exemption Notification No. 25/2012-ST dated 20.06.2012 as amended vide notification No. 03/2013 dated 01.03.2013. I find that there is exemption from payment service tax to goods transport agency for transport of "edible oil" as per above said Mega exemption notification. The relevant provisions of the above said notification is reproduced below.

***Notification No. 25/ 2012-ST, dated 20-6-2012***

As per Entry No. 21 of the N*otification No. 25/2012-ST dated 20-6-2012,* following services provided by a Goods Transport Agency by way of transportation of goods would be exempt-

(a) *fruits, vegetables, eggs, milk, food grains or pulses in a goods carriage;*

(b) *goods where gross amount charged for the transportation of goods on a consignment transported in a single goods carriage does not exceed one thousand five hundred rupees; or*

(c) *goods, where gross amount charged for transportation of all such goods for a single consignee in the goods carriage does not exceed rupees seven hundred fifty.*

***Notification No. 03/2013-S.T. dated 01.03.2013***

Further amendments were made in Notification No. 25/2012-S.T. dated 20.06.2012, vide N*otification No. 03/2013-S.T. dated 01.03.2013,* and following entry is substituted, in respect with services provided by a GTA by way of transportation in a goods carriage of:-

*(a) agricultural produce;*

*(b) goods, where gross amount charged for the transportation of goods on a consignment transported in a single carriage does not exceed one thousand five hundred rupees;*

*(c) goods, where gross amount charged for transportation of all such goods for a single consignee does not exceed rupees seven hundred fifty;*

*(d) foodstuff including flours, tea, coffee, jaggery, sugar, milk products, salt and* ***edible oil,*** *( emphasis supplied) excluding alcoholic beverages;*

*(e) chemical fertilizer and oilcakes;*

*(f) newspaper or magazines registered with the Registrar of Newspapers;*

*(g) relief materials meant for victims of natural or man-made disasters, calamities, accidents or mishap; or*

*(h) defence or military equipments;"*

9. As per the above notification, it is observed that exemption from payment of service tax is available for transportation in a goods carriage of edible oil. I have gone through the definition of edible oil. The Appellant has contended that benefit of above exempted notification is available to them as they are importing crude oil of edible grade, the said goods have been cleared by the Customs authorities and they have transported it from port to factory.

I have gone through the definition of "Edible Oil" mentioned in "The Pulses, Edible oilseed and Edible oils (Storage & Control) Order 1977". As per the clause 2(g) of the above order the "Edible Oil" is defined as under:-

***Clause 2(g) "Edible Oils" means any oil used for cooking for human consumption and includes hydrogenated vegetable oils.***

Further, I have also perused the order "Edible oils Packaging (Regulation) order, 1998" issued under Essential Commodities Act by the Ministry of Food and Consumer Affairs (Department of Sugar and Edible oils) vide Notification G.S.R. 584(E) dated, 17.09.1998, wherein the term *edible oil is defined* ***as vegetable oils and fats and includes any margarine, vanaspati, bakery shorting and fat spread as specified in the Prevention of Food Adulteration Act, 1954 and rules made there under for human consumption.***

10. The contention of the Appellant that since the Edible oil Packaging (Regulation) orders have been repealed and were no longer existed since 5.08.2011, the basis of the definition of edible oil mentioned in the said notice cannot be used, is not acceptable. The main issue is that the Appellant has received services from Goods Transport Agency for transportation of imported goods viz. Crude Palm Oil, Crude Sunflower Oil, Crude Soyabean Oil Crude, Rapeseed oil etc. from port to the factory premises. Although all these imported goods are of "edible grade oil", the same cannot be considered as "edible oil". I do not agree with the contention of the Appellant that the necessary condition "fit for human consumption" is stipulated only for complying with the main intention of FSSA(Food Safety and Standards Act, 2006) and FSSR (Food Safety and Standards(Food Produce Standards and Food Additives) Regulation, 2011). The fulfillment of condition "fit for human consumption" is a criterion to differentiate between the usage of such edible oil or vegetable oil i.e.

whether the usage of the same is for edible purposes or industrial purposes. I have carefully gone through the definitions of "edible oil" mentioned in "The Pulses, Edible oilseed and Edible oils (Storage & Control) Order 1977" and "Edible oils Packaging (Regulation) order, 1998". I find that in both definition, "fit for human consumption" is mandatory to consider the oil as "edible oil".

**11.** There is no definition of "Edible Oil" in FSSA, however, as per the definitions of "edible oil" as per "The Pulses, Edible oilseed and Edible oils (Storage & Control) Order 1977" and "Edible oils Packaging (Regulation) order, 1998" edible oil includes "vegetable oil". I have gone through following definitions mentioned in Food Safety and Standard (Food Products Standards and Food Additives) Regulation, 2011.

***"Vegetable oils"*** *means oils produced from oilcakes or oilseeds or oil-bearing materials of plant origin and containing glycerides*

***"Vegetable oil product"*** *means any product obtained for edible purposes by subjecting one or more edible oils to any or a combination of any of the processes or operations, namely, refining, blending, hydrogenation or interesterification and winterization (process by which edible fats and oils are fractioned through cooling), and includes any other process which may be notified by the Central Government in the official Gazette;*

In view of the above, I find that edible oil / vegetable oil are used for edible purpose directly or to be used to produce any product for edible purpose, means the same can be used for human consumption and fit for human consumption. However, the product " Crude Palm Oil" "Crude Sunflower Oil", "Crude Soyabean Oil" and "Crude, Rapeseed oil" having edible grade cannot be considered as "edible oil" because the same can not be used for human consumption directly or fit for human consumption. The "Crude oil" and "edible oil" are different commodities. I find that Appellant had himself given various manufacturing process of edible oil. On going through the said process, it is established that crude oil undergoes various processes and only after going through all the processes the crude oil become edible oil fit for human consumption. I observe that edible grade crude oil means crude oil which can be processed for making them edible and fit for human consumption. I also find that the Appellant has wrongly relied upon Board's Circular No. 29/97-Cus dated 31.07.1997. The above said circular is for Customs are not applicable in present case of Service tax.

**12.** Moreover, on plain reading of exemption notification No. 03/2013-S.T. dated 01.03.2013, *following items is substituted, in respect* with services provided by a GTA by way of transportation in a goods carriage of:-

*"foodstuff including flours, tea, coffee, jaggery, sugar, milk products, salt and **edible oil,** ( emphasis supplied) excluding alcoholic beverages"*

All above items are fit for human consumption, so purpose of given exemption only to items, which are fit for human consumption. In the said notification, no "Crude oil" is included, which are not fit for human consumption. In view of the above, I hold that the crude oil of edible grade imported by the Appellant cannot be considered as 'edible oil' and hence, the benefit of Notification No. 25/2012-ST dated 20.06.2012 as amended vide Notification No. 03/2013 dated 01.03.2013 is not available to the Appellant. I therefore, uphold the confirmation of the service tax liability made by the Adjudicating Authority.

13. So far as the plea with regard to claim of abatement as per Notification No. 26/2012-ST dated 20.06.2012 and the amount of service tax works out to Rs. 26,28,825/- in place of Rs. 1,05,15,303/- is concerned, I reproduce relevant portion of the Notification No. 26/2012-ST dated 20.06.2012.

***Notification No. 26/2012- Service Tax dated 20.06.2012***

*G.S.R..... (E). - In exercise of the powers conferred by sub-section (1) of section 93 of the Finance Act, 1994 (32 of 1994) (hereinafter referred to as the said Act), and in supersession of notification number 13/2012- Service Tax, dated the 17th March, 2012, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R. 211 (E), dated the 17th March, 2012, the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts the taxable service of the description specified in column (2) of the Table below, from so much of the service tax leviable thereon under section 66B of the said Act, as is in excess of the service tax calculated on a value which is equivalent to a percentage specified in the corresponding entry in column (3) of the said Table, of the amount charged by such service provider for providing the said taxable service, unless specified otherwise, subject to the relevant conditions specified in the corresponding entry in column (4) of the said Table, namely;-*

***Table***

| ***Sl. No.*** | ***Description of taxable service*** | ***Percentage*** | ***Conditions*** |
|---|---|---|---|
| *7* | *Services of goods transport agency in relation to transportation of goods.* | *25* | *CENVAT credit on inputs, capital goods and input services, used for providing the taxable service, has not been taken under the provisions of the CENVAT Credit Rules, 2004.* |

On going through the provisions of the said notification, I find that the benefit of abatement is available subject to the condition that CENVAT credit on inputs, capital goods and input services, used for providing the taxable service, has not been taken **by the service provider** under the provisions of the CENVAT Credit Rules, 2004. The Adjudicating Authority has held that the appellant has not placed any evidence to suggest that their service providers (transporters) had not availed CENVAT credit on inputs, capital goods and input services, used for providing the taxable service and therefore, they has denied benefit of abatement under notification No. 26/2012-ST dated 20.06.2012.

**14.** In this regard, the Appellant has submitted that it is not the responsibility of the Service receiver i.e. the Appellant to provide for any evidence or proof for such condition. However, the Appellants has submitted Certificates from the GTA service providers duly declaring the non-availment of cenvat credit from them. I have gone through the certificates of GTAs submitted by the Appellants. I observe that the GTAs have certified that they have not availed any Cenvat credit in respect of subject transportation service. If the GTAs have not availed Cenvat Credit, under such scenario the Appellant is duly entitled to the benefit of abatement by virtue of the Abatement Notification No.26/2012-ST. I hold that the substantive rights of the Appellant to avail benefit of abatement can not be denied without verifying such certificates of GTAs produced by the Appellant. Therefore, I hold that the OIO denying the benefit of abatement under Notification No. 26/2012-ST to the Appellant as no evidence was placed for compliance of condition of non availment cenvat credit by service provider is become unsustainable without concluding the status of Cenvat Credit availment by Service Provider.

**15.** As regards contention of the Appellant that extended period of limitation is not invocable and plea with regard to no imposition of penalty is concerned, I find that extended period was rightly invoked and penalties were imposed after recording proper reasons. Also as regards, demand of interest under Section 75 of the Act, I hold that the interest was rightly demanded as law as it stands clearly states that delayed payment of service tax attracts interest.

**16.** In view of the above discussion, I hold that:-

**(i)** the crude oil of edible grade imported by the Appellant cannot be treated as 'edible oil' and hence, the benefit of Notification No. 25/2012-ST dated 20.06.2012 as amended vide Notification No. 03/2013 dated 01.03.2013 is not available to the Appellant. I hold that the Adjudicating Authority have rightly denied the benefit of exemption under Notification No. 03/2013-ST dated 01.03.2013 to the Appellant for transport of crude oils.

**(ii)** as regards the benefit of abatement under notification No. 26/2012-ST dated 20.06.2012 , I hold that since the claim of the Appellant that GTAs have not availed Cenvat Credit is required to be verified, this matter is remanded back to the Adjudicating Authority. The certificates of GTAs, certifying that they have not availed cenvat credit are required to be verified. The appellant is required to produce all the necessary documents / evidences for non availment of Cenvat Credit by GTAs before the Adjudicating Authority and the Adjudicating Authority shall determine the issue a fresh after following principles of natural justice. This would lead to re-determination of duty, interest and penalty imposed to this extent.

17. The appeals filed by the Appellant stands disposed off in above terms.

सत्यापित,

16/07/2018

**(SUNIL KUMAR SINGH)**
Commissioner (Appeals)/
Commissioner,
CGST & Central Excise,
Gandhinagar

F. No. V.2/14/GDM/2017
V.2/15/GDM/2017

Date:- .07.2018

**By speed post/Hand Delivery**

To,
M/s Ruchi Soya Ind. Limited,
221/1-3, Survey No. 217/2, 218/2, 219/1-3, 220,
Mithirohar, Gandhidham-370201

**Copy to**:

1) The Chief Commissioner, GST & Central Excise, Ahmedabad Zone, Ahmedabad.
2) The Commissioner (Appeal), CGST and Central Excise Rajkot.
3) The Commissioner, GST & Central Excise, Kutch.
4) The Assistant Commissioner, GST & CEX, Gandhidham Urban.
5) The Assistant Commissioner(Systems), CGST, Rajkot.
6) The Superintendent, CGST and Central Excise, AR Gandhidham,
7) PA to Commissioner CGST and Central Excise Gandhinagar.
8) Appeal F. No.V.2/15/GDM/2017
9) Guard File.