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CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066

SINGLE MEMBER APPEAL BRANCH

Appeal No. ST/1320 – 1321/2010 – SM[BR]& ST / STAY /2822- 2823 / 2010-SM[BR] Date **02/05/2011**

Assistant Registrar
C.E.S.T.A.T, New Delhi

To :
M/S SAF YEAST CO. PVT. LTD.
419, SWASTIK CHAMBERS, CHEMBUR,
MUMBAI-400071

M/S SAF YEAST CO. PVT. LTD. Appellant

Vs

C.C.E. LUCKNOW Respondent

am directed to transmit herewith a certified copy of **Final order No**.237-238/2011-SM[BR]&S/195-196/2011 dated 15.4.2011 passed by the Tribunal under **Section 129, (B) of the Customs Act,1962 & Financial Act 1994 relating to Service Tax**

Assistant Registrar
(SM Appeal Branch)

Copy to :

1. Respondent
C.C.E. LUCKNOW
7-A, ASHOK MARG, LUCKNOW.

2. Adv. / Consult
MR.DURGESH NADKARNI, ADVOCATE
12/14, DR. SUNDERLAL B. MARG, (GOA STREET) NEXT TO REX CHAMBERS
BALLARD ESTATE, MUMBAI-400038.

3. C.D.R
4. Bar association, CESTAT, New Delhi
5. Director Publications, Customs, Excise. I.P. Estate, New
6. M/s Centax Publictions Pvt Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi -
7. Company Law Institute of India Pvt Ltd.,No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17
8. Taxmann Allied Service Pvt Ltd., 59/32, New Rohtak Road, New Delhi -
9. Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road, Ahmedabad-15
10. LAWCRUX Advisors Pvt Ltd. LAW House.1-8.Sector - 10. Faridabad 121003 (Harvana)
11. TaxIndiaOnline.com Pvt Ltd., Unit No.1, 2nd Floor,Vasant Arcade,Nelson Mandela Road, Vasant Kunj, New Delhi - 110070
12. Office Copy
13. Guard file

[2] M/S SAF YEAST CO. PVT. LTD.
419, SWASTIK CHAMBERS, CHEMBUR, MUMBAI-400071

Assistant Registrar
(SM Appeal Branch)

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI, PRINCIPAL BENCH NEW DELHI

Date of Hearing:15.04.11
Date of decision:15.04.11

Service Tax Stay Applications Nos.2822-2823 of 2010
Service Tax Appeals Nos.1320-1321of 2010-SM

[Arising out of Order-in-Appeal No.105-105-ST/LKO2010 dated 21.06.2010 passed by the Commissioner of Central Excise, Lucknow].

M/s.Saf Yeast Co. Pvt. Ltd. Appellant

Vs.

CCE, Lucknow Respondent

For approval and signature:

Hon'ble Shri Rakesh Kumar, Member (Technical)

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1. Whether Press Reporters may be allowed to see CESTAT (Procedure) Rules, 1982.

2. Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?

3. Whether Their Lordships wish to see the fair copy of the Order?

4. Whether Order is to be circulated to the Departmental authorities?

Appearance: Rep. by Shri Nadkarni, Advocate for the appellants.
Rep. by Shri Krishna Pratap Singh, DR for the respondent.

CORAM: **Hon'ble Shri Rakesh Kumar, Member (Technical)**

Final

Order No. 237-238/2011 SM (BR)/Dated:15.04.2011

S-195-196/2011 SM(BR)

Per Rakesh Kumar

The appellants are manufacturers of yeast, which is a fully exempted product and in connection with manufacture of their final product, they were purchasing various inputs for which they were availing the services of GTA. In respect of GTA services availed by them, they were liable to pay service tax as service recipient and for this purpose, they had service tax registration. The point of dispute in this case is as to whether the service tax on GTA services received by them could be paid out of Cenvat credit. This issue was decided by the jurisdictional Dy. Commissioner against the appellant vide orders-in-original no.42/DC/STP/S.TAX/2009 and no.45/DC/STP/S.TAX/2009, both dated 13.11.2009. These orders of the original adjudicating authority both dated 13.11.2009, were received by the appellant on 17.11.2009. As per the records, these orders had been collected in person by Shri Amit Mishra, Manager (Accounts) of the appellants company. Though the last date for filing appeals against these orders was 17.2.2010, the appeal before the Commissioner (Appeals) was filed on 16.4.2010. Thus there was delay of 59 days in filing of the appeal before the Commissioner (Appeals).Though the appellants prayed before the commissioner (Appeals) for condonation of delay on the ground that Shri Amit Mishra, Manager (Accounts) of the appellant company, who had collected the orders on 17.11.2009, had left the job in April, 2010 without preparing the appeal papers and it is only after he left the job that company found that though the orders-in-original had been received, the appeals had not been filed, the Commissioner (Appeals) did not accept this plea and vide order-in-appeal dated 21.06.2010 dismissed the appeal on the ground of time bar without going into the merits of the case. Against this order of the Commissioner (Appeals), these two appeals have been filed.

2. Heard both the sides. Though these matters are listed for disposal of the stay applications, I am of the view that these matters can be finally disposed of and there is no point for keeping these appeals pending.

3. Shri D.H. Nadkarni, Advocate, ld. Counsel for the appellant pleaded that the reasons given by the appellant for condonation of delay of 59 days in filing of the appeal before the Commissioner (Appeals) are genuine, that under the provisions of Section 85 of the Finance Act, 1994 while the normal period for filing appeal before the Commissioner (Appeals) is three months from the date of receipt of the order, in terms of the proviso to Section 85(3) of the Act, the Commissioner (Appeals), on sufficient cause being shown, can accept the appeal within a further period of three months, that in this case though the orders-in-original passed by the Dy. Commissioner had been received by Shri Amit Mishra, Manager (Accounts) of the appellant company on 17.11.2009, he did not take any action in respect of the same for filing of the appeal, that he left

the job on 27.04.2010, that as is clear from the affidavit filed by the appellant and annexures along with affidavit, he had resigned from the job on 27.04.2010 and his dues had been cleared on 27.04.2010, that it is only when Shri Amit Mishra, Manager (Accounts) left his job and his desk were cheked, it was discovered that though the orders passed by the Dy. Commissioner had been received by Shri Amit Mishra, no action has been taken for filing the appeal before the Commissioner (Appeals), that, thereafter as soon as possible, the appeal papers were prepared and the appeals were filed, that delay of 59 days in filing of the appeal before the Commissioner (Appeals) is, therefore, genuine and the Commissioner's (Appeals) order refusing to condone the delay is, therefore, not correct.

4. Shri Krishna Pratap Singh, ld. DR, defending the impugned order pleaded that in course of hearing of this matter on the last date, the appellant had been asked to produce the letter addressed by them to the jurisdictional Provident Fund Commissioner regarding leaving the job by Shri Amit Mishra, Manager (Accounts) of the appellant company, as under the provisions of the Provident Fund Account, the employee is required to intimate the Provident Fund Commissioner about resignation of any employee within a period of one month, that the copy of the intimation to the jurisdictional Provident Fund Commissioner submitted by the appellant show that leaving of services of Shri Amit Mishra of the appellant company was intimated to the Provident Fund Commissioner

only on November, 2010, that this shows that at the time of filing of the appeal by Shri Amit Mishra, Manager (Accounts), he was their employee, that the reasons given by the appellants for delay in filing of the appeal are, therefore, not genuine and that the Commissioner (Appeals), therefore, has rightly dismissed the appeal as time barred.

5. I have carefully considered the submissions from both the sides and perused the records. There is no dispute that the copies of the orders-in-original had been collected by Shri Amit Mishra, Manager (Accounts) of the appellant company on 17.11.2009 and as such, the appeal should have been filed by 17.02.2010. On going through the records, I find that the appellants have enclosed the annexures with affidavit and also enclosed the letter of resignation of Shri Amit Mishra, Manager (Accounts) which show that he left the job on 27.04.2010. Besides this, statement regarding full and final settlement of dues of Shri Amit Mishra, Manager (Accounts), enclosed at Annexure-3 along with the Affidavit shows that his date of relieving is 27.04.2010. Since Shri Amit Mishra had left the appellant company on 27.04.2010, I find merit in their claim that Shri Amit Mishra was not attending to his job properly and it is only after he left the job, that it was discovered that no action has been taken by him for filing of the appeal in respect of the two orders-in-original dated 13.11.2009 passed by the Dy. Commissioner received by him in person. Therefore, in view of the circumstances of the case, the reasons

given by the appellant for delay in filing of the appeals are genuine and as such, the Commissioner's (Appeals) order refusing to condone the delay and dismissing the appeal as time barred is not correct. The impugned order, therefore, is set aside and the matter is remanded to the Commissioner (Appeals) for deciding the appeals on merits. Both the stay applications and appeals stand disposed of as above.

(Rakesh Kumar)
Member (Technical)

Ckp.