CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No.2, R. K. Puram, New Delhi, Court No. 1

Date of hearing/decision: 06.01.2017

Excise Appeal Nos. 1077 of 2011
(Arising out of order-in-original No. 14/2011 dated 18.02.2011 passed by the Commissioner, Central Excise, Delhi-II).

M/s Ambassadors Sky Chef Appellant

Vs.

CCE, Delhi-II Respondent

Appearance:

Sh. Vipul Agarwal, Advocate for the Assessee
Sh. R. K. Manjhi, AR for the Revenue

Coram:

Hon'ble Mr. Justice (Dr.) Satish Chandra, President
Hon'ble Mr. V. Padmanabhan, Member (Technical)

Final Order No. 50183 / 2017

Per: **Justice (Dr.) Satish Chandra**:

The present appeal is filed against the impugned order in original No. 14/2011 dated 18.02.2011 passed by the Commissioner, Central Excise, Delhi-II. The period in dispute is from March, 2005 to February, 2006.

2. The brief facts of the case are that the appellants are engaged in the business of airline catering and manufacture of cakes, pastries and chocolates liable to Central Excise Duty. They have entered into catering agreement with various airlines for supply of metal and food items in accordance with menu given by the respective airline from time to time. Normally, the food items prepared by the appellants at their unit included the vegetarian/ non-vegetarian meal items consisting of dal, curry, rice etc. bread, cakes, pastries, chocolates,

etc. cut fruits, cut vegetables and sweets and namkeens. The appellants procure various items in packed conditions, like curd, pickels, etc. from third parties; the cutlery, crockery, soft drinks and juices and water are provided by the airlines. The food items prepared as per the menu are placed in the bowls and plates provided by the airlines and are wrapped with aluminium foil. Number of such trays containing food items which are not required to be heated (containing bread, salad etc.) including bought out items like curd pickle are placed in a trolley and supplied to the airlines. The prepared meal, other than mentioned above, consisting of dal, curry, rice etc. are placed in the bowls covered with aluminium foils and are placed in another trolley for heating in the flight before service to the passengers. One such meal plate or bowl along with the pastry, food items and other bought out items are placed in a tray along with water bottle and supplied to the passengers in flight. As per the requirement of the airlines a slip containing the name of the appellant is put inside the pouch containing cutlery. The Revenue entertained the doubt regarding taxability of the whole tray as served to the passenger on the ground that the appellants are engaged in the manufacture of excisable goods, here food preparations which also contained a logo and name of the appellant. As such, proceedings were initiated to demand duty from the appellant on such branded food preparations prepared and cleared by them to various airlines. Being aggrieved, the appellant has filed present appeal.

3. Heard Shri Vipul Agarwal, ld. Advocate for the appellant and Sh. R. K. Manjhi, ld. AR for the Revenue.

4. It appears from the record, the identical issue has come up before this Tribunal in the case of ***Taj Sats Air Catering Ltd. vs. CCE, Delhi-II [2016 (334) ELT 680 (Tri.Del.)]*** wherein it was observed as under:

> "*In fact catering to the airline is their main business, and no such similarly placed caterer was paying Excise duty on such meals. The Tribunal accordingly, held that it is difficult to say that there was suppression of fact or wilful misstatement of facts or intention to evade payment of duty. We find in the present case on a similar situation the demand after many years of the impugned period is not sustainable in view of the facts and circumstances of the case. As such, we find the impugned order is not sustainable both on the question of manufacture and on time bar*".

5. By following the ratio laid down in the Taj Sats (supra), we set aside the impugned order.

6. In the result, appeal is allowed with consequential relief.

(Dictated and pronounced in the open Court).

(V. Padmanabhan)	(Justice (Dr.) Satish Chandra)
Member (Technical)	President

Pant