

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE
TRIBUNAL, MUMBAI**

REGIONAL BENCH - COURT NO. I

Excise Appeal No. 392 of 2012

(Arising out of Order-in-Original No. 16/M-I/2011 dated 30.11.2011 passed by the Commissioner of Central Excise, Mumbai-I.)

M/s Ambassador's Sky Chef **Appellant**

Versus

**Commissioner of Central Excise,
Mumbai-I** **Respondent**

Appearance:

Ms. Anjali Hirawat, Advocate for the Appellant

Shri Bidhan Chandra, Authorized Representative for the Respondent

CORAM:

HON'BLE DR. D.M. MISRA, MEMBER (JUDICIAL)
HON'BLE MR. S. SRIVASTAVA, MEMBER (TECHNICAL)

FINAL ORDER NO. A/88421/2018

Date of Hearing: 30.11.2018

Date of Decision: 30.11.2018

Per: Dr. D.M. Misra

This is an appeal filed against Order-in-Original No. 16/M-I/2011 dated 30.11.2011 passed by the Commissioner of Central Excise, Mumbai-I.

2. Briefly stated the facts of the case are that the appellants are engaged in the business of supplying food items as per the requirement of the Airlines and the same were

packed as per the specification of the Airlines and loaded according to the flight schedule of the Aircraft. The appellant also placed the bits of paper mentioning the name of the caterer on the cutlery packs supplied to Indian Airlines. Alleging that placing of the vegetables cuisine, rice, roti, salad etc. on a tray and placing the leaflets bearing the logo as well as the name of "Ambassador Sky Chef" in the cutlery pack placed on the tray, amounting to food preparation bearing brand name and accordingly, classifiable under Heading 2108.99 upto 28.02.2005 and under Tariff Item 2106 9099 thereafter, duty was demanded with interest and penalty. On adjudication, the demand was confirmed with interest and penalty. Hence, the present appeal.

3. Learned Advocate Ms. Anjali Hirawat for the appellant submits that the issue is no more *res integra* and covered by the judgment of this Tribunal in the case of *Taj Sats Air Catering Ltd. Vs. Commissioner of Central Excise, Delhi-II - 2016 (334) ELT 680 (Tri-Del)* and subsequently followed by the Tribunal in the case of *M/s Sky Gourmet Air Catering Pvt. Ltd. Vs. Commissioner of Central Excise, New Delhi - 2016 (11) TMI 1177-CESTAT-ND* and in their won case vide Final Order No. A/50183/2017-EX(DB) dated 19.01.2017.

4. Learned AR for the Revenue reiterates the findings of the learned Commissioner (Appeals).

5. We have carefully considered the submissions advanced by both sides. The issue has been considered by this Tribunal at length in *Taj Sats Air Catering's case (supra)*. After analyzing the relevant tariff entry and the issue in detail, it is observed as follows: -

9. *We find that the show cause notice proposed a demand on the ground that the entire food tray served on board in the aircraft is an item manufactured by the appellant. The value accordingly was of entire tray alongwith various items contained therein. The said demand was confirmed by the Original Authority without discussing the appellant's plea of :-*

(a) The total cutlery bowl and the trays were supplied by the airline,

(b) Fruits, salad, etc., separately packed were not liable to Excise duty,

(c) Various packed labelled bought out items like curd, butter, etc. are not made by the appellant, and

(d) The pastries, chocolates and cakes manufactured by the appellants have suffered appropriate Central Excise duty.

10. *We find that appellants have categorically asserted that placing these items together in a tray is being done on board by the airline staff before service to the passengers. The Revenue's case is that the appellants are liable to Central Excise duty under the category of edible preparations bearing a brand-name. From the nature of process and the methodology of supply by the appellant to the airlines and thereafter by the airlines staff to the passengers on board, we find that it is not legally sustainable to tax the entire meal tray as edible preparations as the same emerges at the time of service to the passengers on board. It is an admitted fact that the appellants prepare roti, rice, curry, etc., and put it in the bowl or tray, wrap them with aluminium foil and supply in a trolley separately to the airline. In another set of tray they supplied various bought out items like cut fruits etc. which do not require pre-heating before service. The logo and name of the appellant in a label is placed inside the cutlery pouch again supplied separately not with the prepared food items like dal, roti, etc. In other words the food items prepared and supplied by the appellants never had brand-name when they were cleared from the premises of the appellant.*

11. *We find that without examining the nature of manufacture and thereby the liability of the appellant the Original Authority straightaway moved to the classification of the impugned meal tray applying the provisions of Rule 3(c) of interpretation rules to determine the correct classification under Central Excise Tariff. He concluded that these food preparations would be appropriately classifiable under Heading 2108 which is the last occurring in numerical order amongst*

the headings which equally merit consideration. Here, we find that the Original Authority has not examined sequentially the application of the said interpretation rules and also it is not clear which are all the equally competing heading meriting consideration for classification. The need for applying the above rule will arise thereafter only.

12. *On perusal of the impugned order and on examining the submissions made by the appellants, we find that the Revenue has not established the liability on the appellant for their activity of manufacturing branded food preparations. Out of Food preparations as contained in the food tray served to the passengers on board, admittedly, the appellants did prepare dal, roti, rice, curry, etc., and supplied the same in trays and bowls covered with aluminium foil. However, these are not the items on which Central Excise duty is sought to be demanded. The Central Excise duty was said to be demanded on the full value of the final complete food tray as served to the passengers on board the aircraft. There is nothing in the impugned order which will substantiate and support the claim of the Revenue on the taxability of such complete food tray on whole value. As such we find that the demand is not sustainable on this ground.*

13. *Regarding the brand-name, we find that the Original Authority found that the appellants are supplying food preparations with brand-name to the airlines. Admitted facts are that the food prepared by the appellants is supplied without brand-name. In separate tray is the cutlery pouch which contains the label with logo and name of the appellant. The same is supplied separately. These are put together by the airline staff and served to the passengers. In any case since the Department has not established the sustainability of the demand on the ground of manufacture, this aspect on brand-name is not further examined by us.*

14. *The appellants strongly contested the demand on the ground of time bar. We find that the demand-cum-show cause notice was issued on 23-2-2010 for the period covering 1-2-2005 to 3-5-2006. It is seen that the notice has been issued after many years invoking extended period of time on the ground that the appellants suppressed the fact about the illicit removal of impugned goods with intend to evade payment of Central Excise duty. The Original Authority confirmed the said demand for extended period on the ground that the appellants were already registered with the Central Excise Department for the manufacture of cakes, pastries and chocolates and are aware of the provisions of Central Excise Law. As such, it was held that the compliance of Central Excise provisions for the impugned goods also rest with them and they have failed in all fronts. Since, the appellants failed to disclose the activities of supply of food preparation with their brand-name to different airlines; extended period was justified by the original authority. We find the demand for extended period and confirmation thereof by the impugned order have been made without any substantial ground considering the nature of dispute in the present case which is of legal interpretation. There is no supporting evidence to allege fraud, suppression with intend to evade payment of duty on the part of the appellants. In a similar matter, where appellants were one of the parties in appeal, the Tribunal in the Final Order No. A/2701-2706/2015-EB, dated 10-8-2015 held that the appellants are providing in catering service to various airlines is very well known fact. 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.

6. The aforesaid judgment is subsequently followed in *Sky Gourmet Air Catering Pvt. Ltd.'s* case (supra) and also in the appellant's own case relating to their Delhi Branch. We do not find any reason to deviate from the observation of the Tribunal in the aforesaid case which has been consistently followed. In the result, the impugned order is set aside and the appeal is allowed with consequential relief, if any, as per law.

(Operative portion of the order pronounced in court)

(Dr. D.M. Misra)
Member (Judicial)

(S. Srivastava)
Member (Technical)

Sinha