

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

द्वितीय तल, जी एस टी अवन / 2nd Floor, GST Bhavan, रेस कोर्स रिंग रोड, / Race Course Ring Road,



more ten

राजकोट / Rajkot – 360 001

Tele Fax No. 0281 - 2477952/2441142 Email: cexappealsrajkot@gmail.com

रजिस्टर्ड डाक ए. डी. दवारा :-

क

अपील / फाइल शंडवा / Appeal / File No.

V2/63 to 67/GDM/2017 V2/108 to 114/GDM/2017 V2/115/GDM/2017 V2/119,133 to 136 /GDM/2017 मून आदेश स*े* D.I.O. No.

Date /

21,04,2017

ST/115 to 119/2017-18 ST/176 to 182/2017-18 ST/187/2017-18 ST/244 to 248/2017-15

22.05.2017 23.05.2017 14.06.2017

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

KCH-EXCUS-000-APP-025-TO-42-2017-18

आदेश का दिनांक / Date of Order:

16.10.2017

जारी करने की तारीख / Date of issue:

23.10.2017

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

म् अपर आयुक्ता संयुक्त आयुक्ता सहायक आयुक्त, केन्द्रीय उत्पाद युक्ता सेवावन, राजकोट । जामनगर । गाँधीधाम। द्वारा उपरत्निकित जारी मृत आदेश से मृजित: ।

Arising out of above mentioned OIO issued by Additional/Joint/Deputy/Assistant Commissioner, Central Excise / Service Tax, Rejkot / Jemnager / Gandhidham :

घ अपीलकर्ता & प्रतिवादी का नाम एवं पता /Name & Address of the Appellant & Respondent :-M/s. Friends Impex, "Maitri Bhavan" Plot No. 18, Sector-08, Ghandhidham (Kutch)-370201

इस आदेश(अपीत) से व्यक्ति कोई व्यक्ति जिम्मानिकित तरीके में उपयुक्त पाणिकारी / पाणिकरण के समाप्त अपीत 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) মীমা মুল্ক ঐন্প্রীয় হলেই যুক্ত एवं लेखकर अपीलीय न्याधारिकरण के प्रति अपील, केन्द्रीय उत्पाद गुल्क अधिविषय ,1944 की धारा 358 के अंतर्गत एवं विरत अधिविषय, 1994 की धारा 86 के अंतर्गत विकासिक्षित जगह की जा सकती है।/ Appeal to Customs, Excise & Service Tax Appealate Tribunal under Section 358 of CEA, 1944 / Under Section 86 of the Finance Act, 1994 an appeal lies to-

(i) वर्गीकरण मृत्याकान से सम्बन्धित सभी मामले सीमा शुम्क, केन्द्रीय उत्पादन शुम्क एवं सेवाकन अपीतीय नवायाधिकरण की विशेष पेठ, सेट कार्यक से 2, अप. के, पुरम, नई दिल्मी, को की जानी चाहिए एं 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) ত্র্যাধনন परিচ্চের 1(a) में बताए गए अपीतों के अलला शेष शशी अपीते शीमा शुरू, वेदीय उत्पाद शुरू एवं सेवाका अपीतीय न्यायाधिकरण (सिस्टेट) की परिचम संसीय परिकर, , दृष्टितीय तथ, बहुमाजी भवन असावी अहमदाबाद- эс-०१६ को की जानी पाहिए ।/ To the West regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at. 2rd Floor, Bhaumali Bhawan, Asarwa Ahmedabad-380016 in case of appeals other than as mentioned in pace-1(a) above

(8)

अधीतीय त्यावाधिकाण के समक्ष अपीस पहनून करने के लिए केन्द्रीय उत्पाद शुन्क (अपीस) नियसपती, 2001, के जियम 6 के अतर्गत जिएतीयत किए सबै पात्र EA-3 को पार प्रतियों से दर्ज किया जाना चाहिए। इतमी से बाम में बाम एक पति के साथ, जहां उत्पाद शुन्क की मींग ज्याज की मींग और बनाया नुमीना, रुपए 5 लाख या उत्तरें कम, 5 लाख रुपए या 50 लाख रुपए तक अथवा 50 लाख रुपए में अधिक है तो कमश्च 1,000/रुपये, 5,000/- रुपये अथवा 10,000/- रुपये का निर्धारित जामा शुन्क की पति संस्था करें। निर्धारित शुन्क कर शुन्ततान, संस्थित अधीतीय स्थायधिकाल की शाखा के सहायक रिजिट्टा के नाम से किसी भी साथित के के देख द्वारा जारी रेखांकित के सुपए द्वारा किया जाना पाहिए। संबंधित सुपर का भुगतान, वैक की उस शाखा में होना चाहिए जहां संबंधित अपीसीय न्यायाधिकाल की शाखा किया है। उद्यक्त आदेश (स्टे ओहर) के लिए आवेदन पत्र के साथ 500/- रुपए का निर्धारित शुन्क जाता होता थे

सबीचित बुग्द का सुनदात, बैंक की उस काला में होना चाईए जहां सबीचित अपीतीच ज्यावाधिकरण की काला दिखा है। इक्टबन आदेश (इट अविट) के लिए उन्हेंद्रन-पत्र के लाग 500% क्या का निर्माण काला होता थे।

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 स्वासाधिकाण के समझ अपील, दिल्ल अधिनियम, 1994 की धारा 86(1) के अल्लंल शेवाबर नियमवाली, 1994, के नियम 9(1) के ल्लल निर्धापित प्रणव S.T.-5 में बार परियों में की जा सकेगी एए उसके साथ जिस आदेश के छिठ्य अपील की सची हो, उसकी पति साथ में संलयन करें (उसकी से एक प्रति धमाणित होनी चाहिए) और इनमें से कम से कम एक पति के साथ, नहां सेवाकर की माँग जीर लगाया साथ मुनील, रुपए 5 लाख या उससे कम 5 लाख रुपए या 50 लाख रुपए लक अध्या 50 लाख रुपए में अधिक है तो बनाए 1,000/- रुपये, 5,000/- रुपये आधा 10,000/- रुपये का निपरित जम शुल्क की प्रति संस्थान करें। निर्धारित शुल्क का मुगतान, संबंधित अपीलीय स्थानाधिकाण की रुखा के सकता करें। निर्धारित शुल्क का मुगतान, संबंधित अपीलीय स्थानाधिकाण की रुखा के सकता करें। निर्धारित शुल्क का मुगतान, संबंधित अपीलीय स्थानाधिकाण की साथ की रुपये के साथ अपता विद्या अपता वाहिए। संबंधित शुल्क का मुगतान, के की उस शाखा में होना धाहिए जाए संबंधित अपीलीय स्थानाधिकाण की साथ विप्रत है। स्थाना आदेश (स्टे ऑडर) के लिए आवेदल-पत्र के तथा 500/- रुपए का निर्धारित शुल्क काम कामा होता ।

The appeal under sub-section (1) of Section 86 of the Finance Act, 1994, to the Appealate Tribunal Shall be filled in quadrupticate 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 takhs but not exceeding Rs. Fifty Lakhs, Rs.10,000/- where the amount of service tax & interest demanded & penalty levied is more than five takhs but not exceeding Rs. Fifty Lakhs, Rs.10,000/- where the amount of service tax & interest demanded & penalty levied is more than fithy 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/-



- वित्त अधिनियम, 1994 की धारा 86 की उप-धाराओं (2) एवं (2A) के अंतर्गत दर्ज की रूपी अपील, सेवाकर निवसकारी, 1994, के निवस 9(2) एवं 9(2A) के तहत निर्धारित प्रथम S.T.-7 में की जा सकेनी एवं उसके शाय आयुनत, केन्द्रीय उत्पाद कुरूक अथवा आयुक्त (अपीस), केन्द्रीय उत्पाद खुरूक दवारा पारित आदेश की प्रतियों संतरन करें (उनमें से एक पति प्रमाणित संभी प्राप्तिए) और आयुक्त दवारा सहायक आयुक्त अथवा उपायुक्त, केन्द्रीय उत्पाद शुरूका रोवाका, को अपीतीय स्थामाधिकरण कर आवेदन दर्ज करने का तिर्देश देशे वाले आदेश की श्री सी लाम से लेलान करनी होती 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.
- सीमा शुरूक, केन्द्रीय उत्पाद शुरूक एवं सेवाकर अपीकीय प्राधिकाण (संस्टेट) के प्रति अपीक्षी के मामले में केन्द्रीय उत्पाद शुरूक अधिनिक्रम 1944 की धारा 35एक के अंतर्गत, जो की विस्तीय अधिनियम, 1994 की धारा 83 के अंतर्गत संशावय को मी लामू की मई है, इस आदेश के प्रति अपीक्षीय (8) प्राधिकरण में अपीन करते समय उत्पाद मुल्कालेश का मांग के 10 प्रतिश्वत (10%), जब मांग एवं जुमीना विवादित है, वा जुमीना, जब बेनल जुमीना विवादित है, का मुगतान किया जाए, बश्चते कि इस धारा के अंतरीत जमा कि जाने वाली अपेक्षित देव शांत दस करोड़ श्याप से अधिक न हों।

केन्द्रीय उत्पद शुरूक एवं सेवाकर के अंतर्गत "सांग किए गए शुरूक" से निरूत शासिक है धारा 11 डी के अंतर्गत रकस

मेजवंट जमा की ती मई गलत राशि (4)

रोजवेट जमा वियमावधी के जियम 8 के अंतर्गत देश रकम dill

- बधर्त वह कि इस धारा के प्रान्धात जिल्लीय (सं. 2) अधितियस 2014 के आरम से पूर्व किसी अपीतीय प्राप्तिकृति के समक्ष विधाराधीन स्थान अर्जी एवं अपीत को जानू नहीं होगे।

For an appeal to be filed before the CESTAT, under Section 3SF 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 Tex, "Duty Demanded" shall include

amount determined under Section 11 D;

amount of erroneous Cenvat Credit taken;

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.

भारत सरकार को पुनरीक्षण आवेदन : (C)

Revision application to Government of India: इस आदेश की पुनरीक्षण यात्रिका लिक्नलिखित मामाची हो, केंद्रीय उत्पाद शुरूक अधिनियम, 1994 की धारा 35EE के प्रथम परंतुक के आसीत अवर अधिय, आरत सरकार, पुनरीक्षण आवेदन हेक्सई, जिल्ह संकलम, शजस्य विभाग, प्रीवेट सर्जिन, जीवन दीप मात्रम, संसद मार्ग, नई दिल्ली-110001, को क्रिया जाना शाहिए। /

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:

- यदि आत के किसी नुकसान के मामने में, जहां नुकसान किसी मान को किसी कारवाजे से शंद्रार गृह के पारगमन के दौरान या किसी अन्य कारखाने वा फिर किसी एक शहार शृह में दूनरे शहार मृह पारगमन के दौरान किसी कारखाने वा किसी एक शहार शृह में दूनरे शहार मृह पारगमन के दौरान किसी कारखाने वा किसी शहार गृह में मान के नुकसान के भागने ग्रेंग 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 source-bouse. tiis
- भारत के बाहर किसी राष्ट्र या क्षेत्र को निर्याल कर रहे भार के विजिन्नोग में प्रयुक्त करने ज्ञाब पर भरी गई केन्द्रीय उत्पाद शुल्क के छुट (रिकेट) के भागने में, जो भारत के बाहर किसी राष्ट्र या क्षेत्र को निर्याल की शमी है। / (R) 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.
- यदि उत्पद मुल्क का मुगतान किए मिना भारत के बाहर, नेपान या भूटान को मान निर्मात किया नया है। / (iii)In case of goods exported outside India export to Nepal or Bhulan, without payment of duty.
- मुनिशिक्ष उत्पाद के उत्पादन मुन्क के भूगतान के जिए जो इसूटी केवीट इस अधिनियम एवं इसके विभिन्न प्रवणाओं के तहत सान्य की गई है और ऐसे अंदेश जो आयुक्त (अपीन) के दुसरा विशेष अधिनियम (न. 2), 1998 की धारा 109 के दुसरा नियत की गई तारीख अथवा समावादिधि पर या बाद से (iv) पत्तील किए गर्ए 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.
- उपरोक्त आर्थेटन की हो परिचा प्रपप्त संस्था EA-8 में, जो की केन्द्रीय उत्पादन कुल्क (अपीत) निवसलाती, 2001, के नियस 9 के अंतर्गत विनिद्दिष्ट है, इस आदेश के संपेषण के 3 मह के अंतर्गत की जाती पाहिए । उपरांकत आर्थेटन के साथ मृत आदेश व अपीत आदेश की हो प्रतिचा संतर्गत की जाती पाहिए। साथ ही केन्द्रीय उत्पाद कुल्क अधिनियम, 1944 की धारा 35-EE के तहत विश्वाित कुल्क की अद्यायण के लक्ष्य के तौर पर TR-6 की प्रति (V) संस्था की जानी पाहिए। / 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.
- पुन्तिमाण आवेदन के साथ जिल्लानिकात निर्धारित शुरूक की अदावनी की जानी वाहिए । वहाँ संसदन एक लाख रूपने या उससे कम ही श्री रूपने 2004- का मुगतान किया। जाए और यदि संसदन एक लाख रूपने से ज्यादा हो तो रूपमें 1000 न वह मुगतान किया जाए । (VI) 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.
- सादे इस आदेश में नहें मूल आदेशों का समावेश हैं तो पत्पेक मूल आदेश के लिए शुरूक का भूगताल, उपयुक्त हम से किया जाना साहिये। इस तथ्य के होते हुए भी की लिखा पढ़ी कार्य से कर अवेदन किया जाता है 1 / In case, if the order covers various numbers of order or Original, fee for each O.L.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 lash fee of Rs. 100V for each. (D)
- प्रशासकातिक न्यापालय सुन्य अधिनियम, 1975, के अनुसूची। के अनुसार मूल आदेश एवं स्थानन आदेश की पनि पर निर्धापित 6.50 क्या ना न्यापालय कुटक टिकिट निर्मा प्रतिकाति । One copy of application or O.LO. 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. (E)
- तीमा शुरुक, केरदीय उत्पाद शुरुक एवं सेवाकर अपीतीय त्यायाधिकरण (करवे विशेष) जिसमावादी, 1982 में वर्णित एवं अन्य संबन्धित मामली की सन्मितित करने वाले तिमसी की और भी स्वान आकर्षित किया जाता है। / Amention is also invited to the rules covering these and other related matters contained in the Customs, Excise and Service Appellate Tribunal (Procedure) Rules, 1982.
- उच्च अपीनीय प्राधिकारी को अपीन दाखिल करने से अबधित स्थानके विशतन और नवीनातम प्रावधानी के लिए, अपीनाशी विभागीय वेबसाइट (G) www.cbec.gov.in #1 देश सकते हैं 17 For the eleborate, detailed and tatest provisions, relating to filling of appeal to the higher appellate authority, the appellant may refer to the Departmental website www.cbec.gov/lip

AT The

:: ORDER IN APPEAL ::

The cluster of appeals listed hereinbelow have been filed by M/s. Friends Impex, "Maitri Bhavan", Plot NO. 18, Sector -08, k, Gandhidham (Kutch) - 370201 (hereinafter referred to as "the appellant") against Orders-In-Original No. shown against each appeal no. (hereinafter referred to as "the impugned order") passed by the Assistant Commissioner, Service Tax Division, Gandhidham-Kutch (hereinafter referred to as "the lower adjudicating authority").

Sr. No.	Appeal File No.	Order-In-Original No. & Date	Period of Refund claim	Amount of refund claim rejected (in Rs.)	
01.	V2/63/GDM /2017	ST/116/2017-18 dated 21.04.2017	December, 2016	73,207/-	
02	V2/64/GDM /2017	ST/119/2017-18 dated 21.04.2017	December, 2016	36,502/-	
03	V2/65/GDM /2017	ST/115/2017-18 dated 21.04.2017	January, 2017	87,334/-	
04	V2/66/GDM /2017	ST/118/2017-18 dated 21.04.2017	December, 2016	1,00147/-	
05	V2/67/GDM /2017	ST/181/2017-18 dated 22.05.2017	January, 2017	86,998/-	
06	V2/108/GDM /2017	ST/117/2017-18 dated 22.05.2017	January, 2017	1,11,314/-	
07	V2/109/GDM /2017	ST/182/2017-18 dated 22.05.2017	January, 2017	1,01098/-	
08	V2/110/GDM /2017	ST/179/2017-18 dated 22.05.2017	February, 2017	76,856/-	
09	V2/111/GDM /2017	ST/180/2017-18 dated 22.05.2017	January, 2017	42,805/-	
10	V2/112/GDM /2017	ST/178/2017-18 dated 22.05.2017	January, 2017	89,243/-	
11	V2/113/GDM /2017	ST/177/2017-18 dated 22.05.2017	February, 2017	94,682/-	
12	V2/114/GDM /2017	ST/176/2017-18 dated 22.05.2017	February, 2017	39,734/-	
13	V2/115/GDM /2017	ST/187/2017-18 dated 23.05.2017	Octo-2016 to Jan- 2017	16.834/-	
14	V2/119/GDM /2017	ST/244/2017-18 dated 14.06.2017	February, 2017	90,322/-	
15	V2/133/GDM /2017	ST/248/2017-18 dated 14.06,2017	February, 2017	1,21,224/-	
16	V2/134/GDM /2017	ST/245/2017-18 dated 14.06.2017	March, 2017	90,492/-	
17	V2/135/GDM /2017	ST/246/2017-18 dated 14.06.2017	February, 2017	68,130/-	
18	V2/136/GDM /2017	ST/247/2017-18 dated 14.06.2017	March, 2017	80,638/-	

Since the issue involved is common in nature and connected with each other, the same are taken up together for disposal.

3. The facts of the case are that - the appellant filed refund claims under Notification No.41/2012-ST dated 29.06.2012 of Service Tax paid to various service providers for rendering taxable services in relation to export of goods for the period specified in the refund claims. The lower adjudicating authority vide impugned order rejected the rebate claim for the amount as shown in the above Table.



- 4. Being aggrieved with the impugned orders, the appellant preferred the appeals, inter-alia, on the grounds that on the facts of the case the lower adjudicating authority has erred in rejecting the refund of Krishi Kalyan Cess (hereinafter referred to as "KKC") and Swachh Bharat Cess (hereinafter referred to as "SBC"); that the lower adjudicating authority erred in rejecting the refund of Krishi Kalyan Cess and Swachh Bharat Cess without affording opportunity to appellant to present their case and thus violated the principles of natural justice and therefore the impugned orders passed may be set aside.
- 5. Personal hearing in the matter was attended to by Shri Manish H. Vora, Chartered Accountant, who reiterated grounds of Appeal and submitted detailed common written submissions dated 13.10.2017, inter alia, emphasizing that no show cause notice has been issued, in any case for denying refund of SBC and KKC; that even no personal hearing notice was given; that the impugned orders have been issued keeping them in dark; that appeals need to be allowed as the refunds granted earlier in respect of SBC & KKC have been adjusted from the refund sanctioned in respect of Service Tax.
- In the written submissions dated 13.10.2017 filed during personal hearing the appellant, inter alia, submitted that they have filed refund claim of Service Tax paid on the input service which they utilized in export of goods as stipulated in Notification No. 41/2012-ST dated 29.06.2012; that the said Notification allowed rebate of Service Tax paid on the taxable service received and utilized by the exporter of goods; that enabling provisions for levy of SBC on services were introduced / incorporated under Section 119 of the Act; that Frequently Asked Question (in short, FAQ) on SBC issued by CBEC, it had been clarified that SBC is not a Cess, but a tax like Service Tax and all the provisions relating to levy and collection of Service Tax as enumerated in Chapter -V of the Finance Act, 1994 and Rules made thereunder, including those relating to exemption and refund from tax will be applicable to SBC also; that accounting code has been prescribed wherein refund of SBC should be accounted for; that if there was no intention of allowing refund of SBC to the public, accounting code for refund of SBC would not have been stipulated; that Notification No. 01/2016-ST, Notification No. 02/2016-ST and Notification No. 03/2016-ST, all dated 02.02.2016, I indicate that refund of wing SBC should be allowed.
- 5.2 As regards, rejection of refund claim in respect of KKC the appellant submitted that enabling provisions for levy of KKC on services were introduced / incorporated under Section 161 of the Finance Act, 2016 vide Chapter – VI of the Act; that they drew attention to Chapter – VI pertaining to KKC; that the appellant

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also drew attention to FAQ issued by the CBEC on KKC and contended that provisions enumerated in Chapter – VI of the Finance Act, 2016, and FAQ issued by CBEC it is clear that KKC is not a Cess but a tax like Service Tax and all the provisions relating to levy and collection of Service Tax as enumerated in Chapter V of the Finance Act, 1994 and Rules made thereunder, including those relating to exemption and refund from tax will be applicable to KKC also; that accounting code for refund of KKC has been prescribed; that if there was no intention of legislature of allowing refund of KKC to the public, accounting code for refund of KKC would not have been prescribed; that Notification No. 30/2016-ST, Notification No. 29/2016-ST, both dated 26.05.2016, which indicate that refund of KKC should be allowed.

5.3 The appellant also relied upon the decision of Hon'ble Karnataka High Court in the case of M/s. TVS Motors Ltd. in Writ Petition Nos. 51753/2013 and 38767-69/2014, wherein it is held that rebate of automobile cess paid on motor vehicles exported out of India is refundable, even though the same is not mentioned in Notification No. 19/2004-CE(NT); that they relied upon the decision of the Hon'ble High Court in the case of M/s. Shree Renuka Sugars Ltd. in CEA No. 14/2008, wherein it is held that cess which is levied on production of sugar is nothing but a duty of excise and as per Rule 3 of the Cenvat Credit Rules, 2004, credit of such duty, as excise are available to the appellant; that same analogy would apply to their case of refund of SBC and KKC, as service tax paid on services received were utilized for export of goods; that the lower adjudicating authority deducted / recovered refund of Service Tax of SBC granted in earlier OIO without issuing any show cause notice and therefore principles of natural justice have been violated. Personal hearing notice was sent to the Department but none appeared.

FINDINGS:-

- Kryng
- 6. I have carefully gone through the facts of the case, the impugned orders, appeal memoranda, as well as oral and written submissions made by the appellant. The issue to be decided in the present case is as to whether the appellant is entitled for rebate of SBC and KKC paid on services used for export of goods under Notification No. 41/2012-ST dated 29.06.2012 or not.
- 7. The appellant has vehemently contended that the refund claims were rejected without giving any notice to them as to why such amount is being deducted; that no opportunity was given to the appellant to explain their case and the 'Principles of Natural Justice' bave not been followed by the lower adjudicating authority. I find ample force in this argument made by the appellant. I find that the

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refund claims were decided by the lower adjudicating authority without issuance of SCN or even without granting any opportunities of personal hearing to the appellant. It is settled position of law that the refund claims should not be rejected without issuance of SCN stating reasons for rejection of refund claims or without affording sufficient and reasonable opportunities to explain their case.

- The appellant has also submitted that that Notification No. 41/2012-ST is stating rebate of service tax paid and sub-section (2) of Section 119 of the Finance Act, 2015 and sub-section (2) of Section 161 of the Finance Act, 2016 clearly stipulate SBC and KKC as service tax respectively; that sub-section (5) of Section 119 of the Finance Act, 2015 and Section 161 of the Finance Act, 2016 also stipulate that all provisions related to refund under Finance Act, 1994 shall be applicable to refund of SBC & KKC. I appears that the above legal provisions were not taken into consideration by the lower adjudicating authority in the impugned orders. I find that the impugned orders are non speaking orders, as far as rejecting refund claims of SBC & KKC is concerned, and hence not sustainable at all.
- 7.2 In view of the above facts, I am of the considered view that the impugned orders need to be set aside and the matter needs to be remanded back to the lower adjudicating authority to pass speaking and reasoned orders offering fair and reasonable opportunities to the appellant.
- 7.3 The appellant has contended in their oral and written submissions that the refund granted in earlier cases have been recovered from some of their refund claims under these appeals, without issuing any show cause notice or personal hearing notice. However, on going through the facts and findings of the impugned orders, it is seen that in none of these appeals such adjustment has been made.
- 7.4 I find that the Commissioner (Appeals) has power to remand appeals as decided by the Hon'ble CESTAT in the case of CCE, Meerut Vs. Singh Alloys (P) Ltd. reported as 2012(284) ELT 97 (Tri-Del). I also rely upon decision of the Hon'ble CESTAT in the case of CCE, Meerut-II Vs. Honda Seil Power Products Ltd. reported in 2013 (287) ELT 353 (Tri-Del) wherein it has been held that Commissioner (Appeals) has inherent power to remand a case under the provisions of Section 35A of the Act. The Hon'ble Gujarat High Court in Tax Appeal No. 276 of 2014 in respect of Associated Hotels Ltd. has also held that even after the amendment w.e.f. 11.05.2011 in Section 35A (3) of the Central Excise Act, 1944, the Commissioner (Appeals) would retain the power to remand.



- 8. In view of the above, I set aside the impugned orders to the extent of rejection of refund claims of SBC & KKC and allow the appeals by way of remand, with direction to the appellant to submit their written submissions to their jurisdictional Divisional Deputy / Assistant Commissioner within two months of the receipt of this order.
- अपीलकर्ता द्वारा दर्ज की गई अपील्स का निपटारा उपरोक्त तरीके से किया जाता है।
- 9. The appeals filed by the appellant stand disposed off in above terms.

(कुमार संतोष) आयुक्त (अपील्स)

By Regd. Post AD

To, अधीयक	(भगास)
M/s. Friends Impex, "Maitri Bhavan",	मे. फ्रेंड्स इंपेक्ष, मैत्री भवन,
Plot No. 18,	ਧੁਕੱਟ ਜ 18,
Sector -08,	सैक्टर - 0८
Gandhidham (Kutch) - 370201	गांधीधाम (कच्छ) - ३७० २०१

Copy to:

- 1) The Chief Commissioner, GST & Central Excise, Ahmedabad Zone, Ahmedabad.
- 2) The Commissioner, GST & Central Excise, Kutch Commissionerate, Gandhidham
- The Assistant Commissioner, GST & Central Excise Division, Gandhidham.
- 4) The Range Superintendent, GST & Central Excise, Gandhidham Division
- 5) Guard File.





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

द्वितीय तल, वस्तु एवं सेवा कर भवन / 2^{tol} Floor, GST Bhavan, रेस कोर्स रिंग रोड, / Race Course Ring Road,



Tele Fax No. 0281 - 2477952/2441142 Email: cexappealsrajkot@gmail.com



:: By Speed Post ::

फ़ाइल संख्या / File No. :-

V2/133 /GDM/2017 192 (109)3

दिनांक: / Date :- 22.08.2017

सेवामें / To,

M/s. Friends Impex Maitri Bhavan, Plot No. 18, Sector-08 Gandhidham - 370 201, -370240

Personal Hearing / व्यक्तिगत सुनवाई

महोदय / Gentleman,

विषय: अपील से संबन्धित व्यक्तिगत सुनवाई के संदर्भ में. Subject: Personal Hearing in Appeal Petition...m/r.

आयुक्त अपीलः, केन्द्रीय वस्तु एवं सेवा कर और उत्पाद शुन्क, राजकोट, द्वारा निर्देशित किए जाने पर, अधोहस्ताक्षरकर्ता आपको सृचित करते हैं कि आपके द्वारा दर्ज की गई निम्नलिखित अपीलः अपीलों के संदर्भ व्यक्तिगत सुनवाई, अपीलीय प्राधिकारी के समक्ष निम्नलिखित दिनांक एवं समय पर निर्धारित की गई है। अतः उपरलिखित पर्ते पर नियत समय पर आपकी उपस्थिति अपेक्षित हैं।

The undersigned has been directed by the Commissioner (Appeals), Central GST & Excise . Rajkot, to intimate you to appear before the appellate authority for personal hearing in the case of following appeals, on the below mentioned date and time, at the above mentioned address.

क्रम संख्या/ Sr. No.	अपील संख्या/ Appeal Number	अपीलार्थी का नाम/ Name of Appellant	मूल आदेश संख्या एवं दिनांक/ Order in Original No. and date	दिनांक एवं समय / Date and time
01 V2/133 /GDM/2017		M/s. Friends Impex	ST/248/2017-18 Dtd. 14-06-2017	12.09.2017 OR 15.09.2017 at 11:30 Hrs.

आपसे अनुरोध है कि व्यक्तिगत सुनवाई में अपनी उपस्थिति की पृष्टि हेतु इस कार्यालय को व्यक्तिगत सुनवाई के हेतु दिनांक 08.09.2017 तक सूचित करें। इसके अलावा, जहाँ तक संभव हो, अपील जापन-पत्र में प्रेषित लिखित प्रस्तुतियाँ तथा उसके बाद यदि अन्य कोई प्रस्तुतियाँ दर्ज कराई गयी हैं तो उन सभी प्रस्तुतियाँ की सॉफ्ट कॉपी अपील के प्रसस्करण में सुगमता के लिए एक CD/ Email वि पर उपलब्ध करायें।

Further, it is requested to confirm the schedule of your appearance in the personal hearing to this office, by 08.09.2017 and to provide soft copy of the breif facts and grounds of appeal made in the Appeal Memorandum and written subminission, if any on Email: cexappealsrajkot@gmail.com, for the ease in processing of this appeal.

भवदीय / Yours sincerely.

अधीक्षक (अपील)/ Superintendent (Appeals)

Copy for information and necessery action:

The Assistant Commissioner, G.S.T., Div.- Gandhidham with request to depute a coversent officer to represent the department during personal hearing. Please note that your coments / say on grounds of appeal and brief facts stated in appeal memorandom may be submitted to this ofice by 08.09.2017 or before