

23



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

क्र	अपील / फाइल संख्या / Appeal / File No	मूल आदेश नं / OIO No.	दिनांक / Date
	V2/8,11,12/GDM/2017	ST/465,490,491/2016-17	08.12.2016
	V2/70,71/GDM/2017	ST/149,131/2017-18	21.04.2017

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

KCH-EXCUS-000-APP-090-TO-94-2017-18

आदेश का दिनांक /
Date of Order: **02.11.2017** जारी करने की तारीख /
Date of issue: **06.11.2017**

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

ग अगर आयुक्त/ संयुक्त आयुक्त/ उप-आयुक्त/ सहायक आयुक्त, केन्द्रीय उत्पाद शुल्क सेवाकर, राजकोट / जयनगर / गांधीधाम द्वारा उपरोक्तित जारी मूल आदेश से सूचित /
Arising out of above mentioned OIO issued by Additional/Joint/Deputy/Assistant Commissioner, Central Excise / Service Tax, Rajkot / Jamnagar / Gandhidham

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

इस आदेश(अपील) से व्यभिक्त कोई व्यक्ति निम्नलिखित तरीके में उपरोक्त अधिकारी / अधिकरण 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 अपील न्यायाधिकरण के प्रति अपील, केन्द्रीय उत्पाद शुल्क अधिनियम, 1944 की धारा 35B के अन्तर्गत एवं वित्त अधिनियम, 1994 की धारा 86 के अन्तर्गत 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) शहीदपुरा न्यायांकन से सम्बन्धित सभी मामलों सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपील 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 बतलाए गए अपील के अलावा शेष सभी अपीलें सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपील न्यायाधिकरण (मिस्टेट) की परिचय क्षेत्रीय पीठिक, द्वितीय तल, बहुमाली भवन असावा अहमदाबाद- 380016 को की जानी चाहिए। /
To the West regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at 2nd Floor, Bhuvanli Bhawan, Asawa Ahmedabad-380016 in case of appeals other than as mentioned in para- 1(a) above

(iii) अपील न्यायाधिकरण के समक्ष अपील प्रस्तुत करने के लिए केन्द्रीय उत्पाद शुल्क (अपील) नियमावली, 2001, के नियम 6 के अन्तर्गत निर्धारित किए गये फॉर्म EA-3 को चार प्रतियों में दर्जे किया जाना चाहिए। इनमें से कम से कम एक प्रति के साथ, जहां उत्पाद शुल्क की सीमा, प्रजा की श्रेणी और लगाया गया अनुमान, रुपए 5 लाख या उससे कम, 5 लाख रुपए या 50 लाख रुपए तक अथवा 50 लाख रुपए से अधिक है जो क्रमशः 1,000/-, रुपए 5,000/-, रुपए अथवा 10,000/- रुपए का निर्धारित जमा शुल्क की प्रति लगाना करे। निर्धारित शुल्क का भुगतान, संबंधित अपील न्यायाधिकरण की शाखा के सहायक रजिस्टार के नाम से किसी भी सार्वजनिक क्षेत्र के बैंक द्वारा जारी रेसकिन्ड बैंक ड्राफ्ट द्वारा किया जाना चाहिए। संबंधित ड्राफ्ट का भुगतान, बैंक की उस शाखा में होना चाहिए जहां संबंधित अपील न्यायाधिकरण की शाखा स्थित है। लगाने वाले (स्टै ऑफिस) 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 demanded/interest/penalty/feeband 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/-

(iv) अपील न्यायाधिकरण के समक्ष अपील, वित्त अधिनियम, 1994 की धारा 86(1) के अन्तर्गत सेवाकर विधायनी, 1994, के नियम 9(1) के तहत निर्धारित फॉर्म S.T.-5 में चार प्रतियों में की जा सकती है एवं उसके साथ जिस आदेश के विरुद्ध अपील की गयी हो, उसकी प्रति साथ में लगाया करे (उनमें से एक प्रति प्रमाणित होनी चाहिए) और इनमें से कम से कम एक प्रति के साथ, जहां सेवाकर की सीमा, प्रजा की श्रेणी और लगाया गया अनुमान, रुपए 5 लाख या उससे कम, 5 लाख रुपए या 50 लाख रुपए तक अथवा 50 लाख रुपए से अधिक है जो क्रमशः 1,000/-, रुपए 5,000/-, रुपए अथवा 10,000/- रुपए का निर्धारित जमा शुल्क की प्रति लगाना करे। निर्धारित शुल्क का भुगतान, संबंधित अपील न्यायाधिकरण की शाखा के सहायक रजिस्टार के नाम से किसी भी सार्वजनिक क्षेत्र के बैंक द्वारा जारी रेसकिन्ड बैंक ड्राफ्ट द्वारा किया जाना चाहिए। संबंधित ड्राफ्ट का भुगतान, बैंक की उस शाखा में होना चाहिए जहां संबंधित अपील न्यायाधिकरण की शाखा स्थित है। लगाने वाले (स्टै ऑफिस) 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 fee of Rs. 1000/- where the amount of service tax & interest demanded & penalty levied is upto 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-धारा (2) एवं (2A) के अंतर्गत टर्न की नयी अपील, सेवारत दिवसवाली, 1994, के नियम 9(2) एवं 9(2A) के तहत निर्धारित धारा 5.1-7 में की जा सकने वाली उसके साथ अनुबन्ध, केन्द्रीय उत्पाद शुल्क अधिनियम (अपील), केन्द्रीय उत्पाद शुल्क तथा सीमा शुल्क अधिनियम के अधिनियम के अधिनियम से एक प्रति प्रामाणिक होती चाहिए और अनुबन्ध द्वारा सहायक अनुबन्ध अधिनियम, केन्द्रीय उत्पाद शुल्क सेवारत, को अपील प्रशासक को अपील टर्न करने का निर्देश देना वाले अपील की प्रति भी साथ में संलग्न करनी होगी। / The appeal under sub section (2) and (2A) of the section 86 the Finance Act 1994, shall be filed in Form 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) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवारत अपील प्रशासक (अपील) के प्रति अपील के मामले में केन्द्रीय उत्पाद शुल्क अधिनियम 1994 की धारा 35EE के अंतर्गत, जो की केंद्रीय अधिनियम, 1994 की धारा 13 के अंतर्गत सेवारत को भी लागू की गई है, इस अपील के प्रति अपील प्रशासक में अपील करने वाले द्वारा उत्पाद शुल्क के साथ 10 प्रतिशत (10%), जब साथ एवं जुड़ना विहित है, या जुड़ना, जब केवल जुड़ना विहित है, का भुगतान किया जाए, कहा कि इन धारा के अंतर्गत जब कि जाने वाली अपील देय होने पर कस्टम एंड सेवारत से अधिक न हो।
केन्द्रीय उत्पाद शुल्क एवं सेवारत के अंतर्गत "मांग किए गए शुल्क" में निम्न शामिल है
(i) धारा 11 डी के अंतर्गत एकत्र
(ii) सेवारत जमा की गई राशि प्रति
(iii) सेवारत जमा प्रशासक के विधि 6 के अंतर्गत देय राशि
- कहा कि इन धारा के अंतर्गत अपील (सं 2) अधिनियम 2014 के अंतर्गत से पूर्व किसी अपील प्रशासक के द्वारा प्रशासक अंश एवं अपील को लागू नहीं होने।

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 Central Credit taken;
- (iii) amount payable under Rule 6 of the Central 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 अपील :
Revision application to Government of India:

इस अपील की पुनरीक्षण प्रक्रिया नियमित निर्धारित प्रणाली में, केन्द्रीय उत्पाद शुल्क अधिनियम, 1994 की धारा 35EE के प्रथम पालक के अंतर्गत आता है, भारत सरकार, पुनरीक्षण अपील इकाई, वित्त विभाग, उत्तम भवन, लोक संघ, जीवन दीप भवन, लक्ष्मी मार्ग, नई दिल्ली-110001, को किया जाता चाहिए। / A revision application has to be filed 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 अलग गृह के पारगमन के दौरान या किसी अन्य कारखाने या फिर किसी एक अलग गृह से दूसरे अलग गृह परगमन के दौरान, या किसी अलग गृह से या स्थान में माल के प्रसंस्करण के दौरान, किसी कारखाने या किसी अलग 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 शर्त की गई केन्द्रीय उत्पाद शुल्क के छूट (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 an 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 से 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 इच्छा की गई है अधिनियम एवं इसके विभिन्न प्रावधानों के तहत माल की गई है और उसे अपील जो आकर्षक (अपील) के द्वारा वित्त अधिनियम (सं. 2), 1998 की धारा 109 के द्वारा नियंत्रित की गई जाती है अधिनियम अधिनियम पर या बाद में परिवर्तित की गई 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 अपील की दो प्रतियां फॉर्म संख्या EA-8 में, जो की केन्द्रीय उत्पाद शुल्क (अपील) दिवसवाली, 2001, के नियम 9 के अंतर्गत विहित है, इस अपील के संवर्धन के 3 महीने के अंतर्गत की जानी चाहिए। उपरोक्त अपील के साथ मूल अपील व अपील अपील की दो प्रतियां संलग्न की जानी चाहिए। साथ ही केन्द्रीय उत्पाद शुल्क अधिनियम, 1944 की धारा 35-EE के तहत निर्धारित शुल्क की अपील के साथ के लिए 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 अपील के साथ निम्नलिखित निर्धारित शुल्क की अपील की जानी चाहिए। / 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 अपील में कई मूल अपील का समावेश है तो प्रत्येक मूल अपील के लिए शुल्क का भुगतान, उपरोक्त दर से किया जाना चाहिए। इस लक्ष्य के होने पर भी की बिना वही करने से करने के लिए प्रामाणिक अपील प्रशासक को एक अपील या केन्द्रीय सरकार को एक अपील प्रेषित किया जाता है। / In case, if the order covers various numbers of order, an Original fee for each O.I.O. should be paid in the aforesaid manner, not withstanding the fact that the one appeal to the Appellate Tribunal or the one application to the Central Govt. As the case may be, is filed to avoid multiplicity work in sending Rs. 1 lakh fee of Rs. 100/- for each.

(E) न्यायाधीश न्यायालय शुल्क अधिनियम, 1975, के अनुसूची-1 के अनुसार मूल अपील एवं संलग्न अपील की प्रति या निर्धारित 6.50 रुपये का न्यायालय शुल्क रिफिट लगा हुआ 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-1 in terms of the Court Fee Act,1975, as amended.

(F) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवारत अपील प्रशासक (अपील) दिवसवाली, 1992 में शामिल एवं अन्य संबंधित मामलों को सम्बन्धित करने वाले नियमों की और भी न्याया अधिनियम किया जाना 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, 1992.

(G) अन्य अपील प्रशासक को अपील दर्जित करने से संबंधित जानकारी, विवरण और नवीनतम प्रावधानों के लिए, अपील प्रशासक द्वारा www.cbec.gov.in को देखा जा सकता है। / 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 ::

The appeals listed below have been filed by M/s. Terapanth Foods Ltd., "Maitri Bhavan", Plot No. 18, Sector-08, Gandhidham-Kutch (hereinafter referred to as "the appellant") against Orders-In-Original shown against each appeal no. (hereinafter referred to as "the impugned orders") 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	V2/8/GDM /2017	ST/465/2016-17 & 08.12.2016	Jun, 2016	24,818/-
02	V2/11/GDM /2017	ST/490/2016-17 & 08.12.2016	Jul, 2016	37,230/-
03	V2/12/GDM /2017	ST/491/2016-17 & 08.12.2016	May, 2016	20,249/-
04	V2/70/GDM /2017	ST/149/2017-18 & 21.04.2017	Apr, 2016 to Mar, 2017	52,914/-
05	V2/71/GDM /2017	ST/131/2017-18 & 21.04.2017	Apr, 2016 to Mar, 2017	1,816/-

2. 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 orders rejected the refund claim of Swachchh Bharat Cess (hereinafter referred to as "SBC") and Krishi Kalyan Cess (hereinafter referred to as the "KKC") for the amount as shown in the above Table.

3. The lower adjudicating authority vide Order-In-Original No. ST/149/2017-18 dated 21.04.2017, not only rejected refund claim of SBC of Rs. 5,906/- and KKC of Rs. 4,933/- pertaining to the relevant period, but also deducted SCB of Rs. 42,075/- which had already been sanctioned and disbursed to the appellant under previous Order-in-Original Nos. (i) ST/168/2016-17 dated 02.05.2016; (ii) ST/195/2016-17 dated 11.05.2016 and (iii) ST/221/2016-17 dated 25.05.2016, without issuance of SCN for recovery of such erroneous refunds under Section 73(1) of the Act.

4. Being aggrieved with the impugned orders, the appellant preferred the appeals, *inter-alla*, on the following grounds:

- (i) The lower adjudicating authority erred in law and on facts in rejecting the refund of KKC and SBC to them without assigning any cogent reason.
- (ii) The lower adjudicating authority further erred in rejecting the refund without



affording any opportunity to present their case and thus violating the principles of natural justice.

5. Personal hearing in the matter was attended to by Shri Manish H. Vora, Chartered Accountant, who reiterated grounds of appeal and submitted that neither SCN nor PH Notice issued to them; that no opportunity of personal hearing has been given to them; that the refund earlier granted on SBC & KKC was recovered from them from refund of service tax granted.

5.1. During the course of personal hearing, Shri Manish H. Vora, CA also submitted written submission stating as under:

5.1.1 The refund of SBC & KKC were rejected/denied to them without affording any opportunity/notice to the appellant to explain their case as to why such refund should not be denied to them. It is fundamental Principle of law that before deciding any issue against the appellant they must be given an opportunity to represent their case as to why such action should not be taken. The lower adjudicating authority has given go by to such fundamental Principle of Law and rejected claims of the appellant by simply stating that "SBC & KKC is deductible from the claim" without assigning any reason as to why such claim is deductible thus violating the Principles of Natural Justice.

5.1.2 They filed refund claim of service tax paid on the input service which they have utilized in export of goods as stipulated in Notification No. 41/2012-ST dated 29.06.2012. The said notification allows rebate of service tax paid on the taxable service received by the exporter of goods and utilized by them for export of goods. The enabling provisions for levy of SBC on services were introduced/incorporated under Section 119 of the Finance Act, 2015 under Chapter-V of the said Act. The relevant portion of the said provision through which the same was introduced are reproduced herein below:-

Swachchh Bharat Cess

119. (1) *This Chapter shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.*

(2) *There shall be levied and collected in accordance with the provisions of this Chapter, a cess to be called the Swachh Bharat Cess, as service tax (emphasis supplied) on all or any of the taxable services at the rate of two per cent on the value of such services for the purposes of financing and promoting Swachh Bharat initiatives or for any other purpose relating*



thereto.

(3) *The Swachh Bharat Cess leviable under sub-section (2) shall be in addition to any cess or service tax leviable on such taxable services under Chapter V of the Finance Act, 1994, or under any other law for the time being in force.*

(4) *The proceeds of the Swachh Bharat Cess levied under sub-section (2) shall first be credited to the Consolidated Fund of India and the Central Government may, after due appropriation made by Parliament by law in this behalf, utilize such sums of money of the Swachh Bharat Cess for such purposes specified in sub-section (2), as it may consider necessary.*

(5) *The provisions of Chapter V of the Finance Act, 1994 and the rules made there under, including those relating to refunds and exemptions from tax, interest and imposition of penalty shall, as far as may be, apply in relation to the levy and collection of the Swachh Bharat Cess on taxable services, as they apply in relation to the levy and collection of tax on such taxable services under Chapter V of the Finance Act, 1994 or the rules made there under, as the case may be."*

They also relied upon the Frequently Asked Question (FAQ) on SBC issued by Central Board of Excise & Custom. Relevant portion of the said FAQ are reproduced herein below:-

Q.1 What is Swachh Bharat Cess (SBC)?

Ans. It is a Cess which shall be levied and collected in accordance with the provisions of Chapter VI of the Finance Act, 2015, called Swachh Bharat Cess, as service tax on all the taxable services at the rate of 0.5% of the value of taxable service.

.....

.....

Q. 8 Whether separate accounting code will be there for Swachh Bharat Cess?

Ans. Yes, for payment of Swachh Bharat Cess, a separate accounting code would be notified shortly in consultation with the Principal Chief Controller of Accounts. These are as follows:-

BC-111

Swachh Bharat Cess (Minor Head)	Tax Collection	Other Receipts	Penalties	Deduct Refunds
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0044-00-506	00441493	00441494	00441496	00441495
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Q.10 Whether SBC is a 'Cess' on tax' and we need to calculate SBC @ 0.50% on the amount of service tax like we were earlier doing for calculating Education Cess and SHE Cess?

Ans. No, SBC is not a cess on Service Tax. SBC shall be levied @ 0.5% on the value of taxable services.

On perusal of the provisions enumerated in Chapter-V of the Finance Act, 2015 and FAQ issued by Central Board of Excise & Custom, 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 there under including those relating to exemption and refund from tax will be applicable to SBC also. Further in FAQ, an accounting code has been prescribed wherein refund of SBC should be accounted for. If there is no intention of allowing refund of SBC to the public at large, question of notifying accounting code for refund of SBC would not have been arisen.

5.1.3 They relied upon various notifications issued by Central Board of Excise & Custom on 02.02.2016 whereby SBC component allowed as rebate/refund to the exporter. Summary explaining the changes brought in by said notifications are reproduced herein below:-

Swachh Bharat Cess Component allowed as Rebate/Refund + services used beyond factory for export also refundable

Sr no.	Service Tax Notification No.	Effect
1.	01/2016-ST dt. 02-02-2016	Notification No. 41/2012-ST, dated the 29th June, 2012 amended so as to allow refund of service tax on services used beyond the factory or any other place or premises of production or manufacture of the said goods for the export of the said goods and to increase the refund amount commensurate to the increased service tax rate.
2.	02/2016-ST dt.	Notification No. 12/2013-ST, dated the 1st July, 2013



	02-02-2016	amended so as to allow refund of Swachh Bharat Cess paid on specified services used in an SEZ.
3.	03/2016-ST dt. 02-02-2016	Notification No. 39/2012-ST, dated the 20th June, 2012 amended so as to provide for rebate of Swachh Bharat Cess paid on all services, used in providing services exported in terms of rule 6A of the Service Tax Rules.

On going through the above, it is found that vide Notification No. 1/2016, CBEC has increased the scheduled rate of tax refundable to the exporter due to increase in tax because of introduction of SBC whereas vide Notification No. 2 & 3 with respect to Notification No. 12/2013-ST dated 01.07.2013 and Notification No. 39/2012-ST dated 20.06.2012, refund of SBC is allowed to the exporter. In view of such clarification brought in by the notification, the question of denying refund of SBC to the appellant does not arise. They further place on record that, in their own case, the department itself has allowed the refund of SBC and therefore adopting the contrary stand in the case under consideration is not justifiable.

5.1.4 They further submitted that the enabling provision for levy of KKC on services were introduced/incorporated under Section 161 of the Finance Act, 2016 vide Chapter-VI of the said Act. The relevant portion of the said provision through which the same was introduced are reproduced herein below:-

"CHAPTER VI

'Krishi Kalyan Cess'

- "161 (1) This Chapter shall come into force on the 1st day of June, 2016.
- (2) There shall be levied and collected in accordance with the provisions of this Chapter, a cess to be called the Krishi Kalyan Cess, as service tax (emphasis supplied) on all or any of the taxable services at the rate of 0.5 per cent. on the value of such services for the purposes of financing and promoting initiatives to improve agriculture or for any other purpose relating thereto.
- (3) The Krishi Kalyan Cess leviable under sub-section (2) shall be in addition to any cess or service tax leviable on such taxable services under Chapter V of the Finance Act, 1994, or under any other law for the time being in force.
- (4) The proceeds of the Krishi Kalyan Cess levied under sub-section (2) shall first be credited to the Consolidated Fund of India and the Central Government may, after due appropriation made by Parliament by law in

16
this behalf, utilise such sums of money of the Krishi Kalyan Cess for such purposes specified in sub-section (2), as it may consider necessary.

(5) The provisions of Chapter V of the Finance Act, 1994 and the rules made there under, including those relating to refunds and exemptions from tax, interest and imposition of penalty shall, as far as may be, apply in relation to the levy and collection of the Krishi Kalyan Cess on taxable services, as they apply in relation to the levy and collection of tax on such taxable services under the said Chapter or the rules made there under, as the case may be."

5.1.5 They relied upon the Frequently Asked Question (FAQ) on KKC issued by Central Board of Excise & Custom. Relevant portion of the said FAQ are reproduced herein below:-

Q1: What is KKC?

Ans : It is a Cess called as Krishi Kalyan Cess, which shall be levied and collected in accordance with the provisions of Chapter VI of the Finance Act, 2016, as Service tax on all the taxable services at the rate of 0.5% on the value of such taxable services.

.....

.....

Q10: Whether KKC is a 'Cess on tax' and we need to calculate KKC @ 0.5% on the amount of Service tax like we were earlier doing for calculating Education Cess and SHE Cess?

Ans : No, KKC is not a Cess on Service tax. KKC shall be levied @ 0.5% on the value of taxable services.

.....

.....

Q12: What is the accounting code for KKC?

Ans : The Central Government vide Circular No. 194/4/2016-ST dated May 26, 2016 has notified separate accounting codes for payment of KKC in the following manner:-

Krishi Kalyan Cess (Minor Head)	Tax Collection	Other Receipts	Penalties	Deduct Refunds
0044-00-507	00441509	00441510	00441512	00441511

On perusal of the provisions enumerated in Chapter-VI of the Finance Act, 2016 and



15

FAQ issued by Central Board of Excise & Custom, it is found 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 there under including those relating to exemption and refund from tax will be applicable to KKC also. Further in FAQ, an accounting code has been prescribed wherein refund of KKC should be accounted for. If there is no intention of allowing refund of KKC to the public at large, question of notifying accounting code for refund of KKC would not have been arisen. Under Cenvat Credit Rules, 2004, credit of KKC is allowable against the payment of KKC by the service provider.

5.1.6 They relied upon various notifications issued by Central Board of Excise & Custom on 26.05.2016 whereby KKC component allowed as rebate/refund to the exporter. Summary explaining the changes brought in by said notifications are reproduced herein below:-

Krishi Kalyan Cess Component allowed as Rebate/Refund

<i>S.No.</i>	<i>Notification No.</i>	<i>Effect</i>
01	30/2016-Service Tax dt. 26-05-2016	Seeks to amend notification No. 12/2013-ST, dated the 1st July, 2013 so as to inter alia allow refund of Krishi Kalyan Cess paid on specified services used in an SEZ.
02	29/2016-Service Tax dt. 26-05-2016	Seeks to amend notification No. 39/2012-ST, dated the 20th June, 2012 so as to provide for rebate of Krishi Kalyan Cess paid on all services, used in providing services exported in terms of rule 6A of the Service Tax Rules.

On going through the text summary of notification reproduced herein above, it is found that vide Notification No. 29 & 30/2016 with respect to Notification No. 12/2013-ST dated 01.07.2013 and Notification No. 39/2012-ST dated 20.06.2012, refund of KKC is allowed to the exporter. In view of such clarification brought in by the notification, the question of denying refund of SBC to the appellant does not arise.

5.1.7 They relied on decision rendered by Hon'ble High Court of Karnataka in the case of M/s. TVS Motors Ltd. Vs Union of India in Writ Petition No. 51753/2013 and 38767-69/2014 wherein the Hon'ble Court has held that rebate of automobile cess paid on motor vehicles exported out of India is refundable even though the same is not mentioned in the Notification No. 19/2004-CE(NT). They rely on decision of the same



High Court in the case of Commissioner of Central Excise Vs. Shree Renuka Sugars Ltd. in C.E.A. No. 14/2008 wherein the Hon'ble Court has held that the 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-2014, credit of such duty as excise are available to the appellant. The same analogy would apply to the case of SBC & KKC and appellant is eligible and entitled for refund of SBC & KKC as service tax paid on service received which were utilized for export of goods.

5.1.8 They also submitted that in some of the OIO, while sanctioning the refund of service tax, the lower adjudicating authority has deducted/recovered the amount of SBC granted in earlier OIO to the appellant without issuing any Notice asking the appellant to show cause as to why such adjustment should not be made and thus violated the principle of natural justice on this count also.

Findings:

6. I have carefully gone through the facts of the case, the impugned orders, appeal memoranda and the written as well as oral submissions of the appellant. The issue to be decided in the present case is as to

(i) whether refund of SBC and KKC paid on the services used for export of goods under Notification No. 41/2012-ST dated 29.06.2012 is admissible or not?

(ii) Whether orders passed are correct or not?

7. The appellant has contended that the refund claims were rejected without giving any notice 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' have not been followed by the lower adjudicating authority. I find ample force in this argument made by the appellant. I find that the refund claims were decided by the lower adjudicating authority without issuance of Show Cause Notice to the appellant and without granting opportunities of personal hearing to them. It is settled position of law that the refund claims should not be rejected without issuance of Show Cause Notice demonstrating reasons for denial/restriction of refund claim or without affording sufficient opportunities to explain their case.

7.1 Notification No. 41/2012-ST is clearly stating refund 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. 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



13

Finance Act, 1994 shall be applicable to SBC & KKC. It is not coming out from the impugned orders whether above provisions were taken into consideration by the lower adjudicating authority or not since no Show Cause Notice or personal hearing notices were issued to the appellant. Therefore, these impugned orders, being non speaking orders as far as rejecting refund claims of SBC & KKC is concerned, are not sustainable at all.

8 I find that appellant has also contended that in some of the impugned orders, while sanctioning refund of Service Tax the lower adjudicating authority has deducted amount of SBC & KKC already granted vide earlier Orders-in-Original without issuing any Show Cause Notice or only P.H. Notice, which is complete violation of the principles of natural justice. I find that the lower adjudicating authority vide Order-In-Original No. ST/149/2017-18 dated 21.04.2017, not only rejected refund claim of SBC of Rs. 5,906/- and KKC of Rs. 4,933/- pertaining to the relevant period, but also deducted SBC of Rs. 42,075/- which had already been earlier sanctioned and disbursed to the appellant under previous orders, as detailed below, from refund of service tax grantable/granted to the appellant without issuance of SCN.

Sr. No.	Order-In-Original No.	Date	Swachh Bharat Cess Recovered
1	ST/168/2016-17	02.05.2016	19725
2	ST/195/2016-17	11.05.2016	20416
3	ST/221/2016-17	25.05.2016	1934
		Total	42075

8.1 I am of considered view that such adjustment of refund amount already sanctioned vide previous orders recovered from subsequent refund claims without issuance of Show Cause Notice or without affording fair and reasonable opportunities of personal hearing to explain their case against the proposed adjustment is against the principles of natural justice. Therefore, I find that impugned orders deducting refund of SBC & KKC, sanctioned under previous orders, are not correct, legal and proper on this account also.

Remanded

9. In view of above facts, the impugned orders need to be set aside and the matter needs to be remanded back to the lower jurisdictional adjudicating authority to pass speaking and reasoned orders after offering fair and reasonable opportunities to the appellant.



10. 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.

11. In view of the above facts, I set aside the impugned orders and allow the appeals by way of remand with direction to the jurisdictional Divisional AC/DC to pass speaking and reasoned orders offering fair and reasonable opportunities to the appellant within 3 months of the receipt of this order.

12. अपीलकर्ता द्वारा दर्ज की गई अपीलस का निपटारा उपरोक्त तरीके से किया जाता है।

12. The appeals filed by the appellant stand disposed off in above terms.

सत्यापित,

(Signature)
06/11/2017

भार. पी. शाह
अधीक्षक (अपील्स)

(Signature)
06/11/2017
(कुमार संतोष)

आयुक्त (अपील्स)

By Regd. Post AD

To,

M/s. Terapanth Foods Ltd.,
"Maitri Bhavan", Plot No. 18, Sector-08,
Gandhidham-Kutch

मे. तेरापंथ फूड्स लिमिटेड,
"मैत्री भवन", प्लॉट न. १८, सेक्टर - ०८,
गांधीधाम - कच्छ

Copy to:

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

