| ATION TAX MARKE | 0/0 THE COMMISSI द्वितीय तल, रेस कोर्स | म्बीलच, बस्तु एवं सेवा कर और केन्द्री ONER (APPEALS), GST & CENTH जी एम टी भवन / 2 ⁻⁰ Floor, GST Bhas) रिंग रोड, / Race Course Ring Road, प्रिजकोट / Rad, - 200,001 | AL EXCISE, | |
|--|--|---|--|--|
| | | <u>राजकोट / Rajkot - 360 001</u> 7952/2441142 Email: cexappealsra | ikot/itemail.com | |
| जिस्टर्व शक | ए. डी. द्वारा :- | | Provide State of the second state of the secon | |
| 5 अप्रैश | ा भाइत शंक्षमा । (भाइत शंक्षमा) (cal / File Ma | मूल आदेश ज / (२.१.१), bio. | Reason / | |
| V2/68/0 | /GDM/2017 /DM/2017 /DM/2017 | ST/469,474/2016-17 ST/23/2917-18 ST/622/2016-17 | 08.12,2016 06.04.2017 27,02,2017 | |
| ब अपील | आदेश संख्या (Order-In-Appe | zal No.); | | |
| | | 000-APP-095-TO-98-20 | 017.18 | |
| | का दिलांक / 02.11.201' f Order: | and the second second | 06.11.2017 | |
| कुमार Passe | संतोष, आयुक्त (अपील्स), ed by Shri Kumar Santi | राजकोट द्वारा पारित / osh, Commissioner (Appeals) | Paikot | |
| गणः अगरः अग मृत्य अदेव Arissing a | कार समुक्त अन्युक्त/ उत्तमुक्त/ सहावक अ 1 से सुचित: / out of above menbored OIO insued | ngen, heißte some njou/ dames, scaute / an by Additional Joint/Deputy/Assistant Camous | म्बनः / माप्रीप्रमाः इत्या उप्तनिद्धिन आहि | |
| Rajkot 7 | Rajkat / Jennagar / Gardhicham : अपीलकर्ता & प्रतिवादी का साम एवं पता /Name & Address of the Appellant & Responden. :- | | | |
| M/s. (| Oswal Salt & Chemical Inc | ds.,, "Maitri Bhavan" Plot No. 18 | 8, Sector-08,Ghandhidham | |
| (Kutch | | | | |
| इस अवेश Any per | (প্রথমির বাই আবির নিস্কানিয়ি মন aggrieved by this Order-m-Appeol | n nhà al yogen vitrenti i alterne è mer I may file an appeal to the appropriate auto- | अपील दावा का सकता है। vity in the following way | |
| A) मीमा शुरू अंत्रमंत ए | क ,मेमद्वीय उत्पद्ध मुल्क एवं गीलकर अपी ग किल आधिवियम 1934 की रागा 86 र | भिय स्वर्धाधिकरण के पति अपीतः, केन्द्रीय उत्पाह में अंतर्गत विस्थाविधित जगह की जा सकति है // | के 350 Million (1944 के 1977 250 के | |
| Appeal 1 Finance | o Gustoms, Excise & Service Tax / Act, 1994 an appeal lies to:- | Appellate Tribunal under Section 358 of CE | A, 1944 / Doder Section 56 of the | |
|) समीकरण 2, आर. (| सुल्पांकन में सम्बन्धित नभी मामने गौमा ७. पुरम, नई दिल्ली, को की जानी चाहिए ।/ | धुल्क, वेनदीय उत्पादन भुल्क एवं ग्रेजवार अपीलेख न | वापारिकरण की डिक्रेंच केंद्र, देरट ब्लॉक न | |
| The spe matters | cial bench of Customs, Excise & Se- militing to classification and valuation | rvice Tax Appellate Tribunal of West Block I | No. 2, R.E. Purasi, Mew Della in all | |
|) उपरोकत (डिस्टेट) | गरिप्रदेह 1(a) में बलाए सर अर्थातों के अ की परिचम होगीय पीठिका, द्वितीय तल, 1 | तनाता रोप सभी अधीओं सीमा मुल्क, केंद्रीय उल्पाह बहुताली गर्थक जमार्थी अवमहाकहें अल्पनार को क्षेत्र ज | अश्रक एन मेताकर अपीतीम ज्यासांसिकरण मैंद साहिए ह | |
| To the Asarwa | West regional bench of Customs, Ext Ahmedabad-380016 in case of appea | cise & Service Tax Appellate Tribunal (CEST is other than as mentioned in para-1(a) abo | AT) m, 2 nd Floor, Bhoumali Bhowan, over | |
| याव चयत्र और लगा व्यये, 5,6 ल्याधारित संबंधिल इ | अधीनीय न्यायाधिकत्व के समझ अभीन प्रस्तुत काने के लिए केन्द्रीन उत्पद्ध सुबंध (तपीन) नियमावती, 2001, के लियन 6 के उत्पत्न नियोधित किए सर्व प्रयत्न EA-3 को घार पतियों में दर्ज किया जाना पाहिए । इनमें में कम तो क्या एस पति के स्था, तरंग उत्पाद मुल्क की मौग तयान की सांग और लगाम क्या जुमीना, क्या 5 तरक या उताने कन, 6 ताज क्या के 50 तरंग क्या एस अध्या 50 तरंग राण्या, मूल्क की मौग तयान की सांग क्यों, 5,000/- रुपमें अध्या 10,030/- क्यों का जियोधित जमा शुल्क की पति सल्पन करें। नियोधित खुल्क का मुंगलन स्वाध न्यायाधिकरण की धाखा के महायक उत्तिरदार के सांग हो कियो भी सावेजिनक वों के बंक द्वारा जाती त्यावित के इन्छ प्रायत निया जना पाहिए । संबंधित इम्पट का मुनतान, के की उस मारवा से होना पाहिए जहां संवीधित न्यावाधिकरण की खाया स्थित है। स्थास उन्होंच (त्ये आदा) के लिए आंग्रेसन-एव के साथ 500/- रुपर का नियोधित शुल्क जमा करना होना थ | | तरु इत्याद माल्य की सीम द्वारत की गाँव तक रुप से अधिक है तो करूप 1,0007 पित माल्क का मेगराज क्यांतित अपीलीम पित मेल क्या जाता जिल्हा करना प्रातिम | |
| 1,000/- 1 above 5 sector b | Append Hules, 2003 and shall be a Pts 50001, Rs 10,0001 where amount 0 Lac respectively in the form of or ank of the place where the besch of | be filled in quadruplicate in form EA-3 / as ccompanied against one which at least about (of duty demondlinemethy-enalty/refund is - ossed bank draft in favour of April Registrar any nominated public sector bank of the play shell be accompanied by a fee of Rs. 500/ | Ad be accompanied by a fee of Ru, upto 5 Lac., 5 Lac. to 50 Lac. and r of tranct of any nontinuited public according the branch of the Tuberad | |
| जिम्मी से उनमें से उनमें मा केंप्री आप शहरपत्न (बीक की उ | प्रभाग S.T. 5 में त्या प्रतिथों में की जा धने एक पनि प्रमाणित होनी पानिए) और इसने पए 5 लाख मा उसने कर, 5 लाख स्था म 10,000/ रुपये का निर्फारित जन्म शुल्क जिल्हार के लाम में जिन्ही जी सार्वजिनक हो। | विकास, 1994 की पास सर्व(1) के संतर्गत संवाकत दि भी एवं उसके स्वाय दिया आदेश के विवय अपील की 1 में करन से करन एक प्रति के स्वाय, जहा सेवाकत क या 50 लाग अपए तक अपता 50 स्वाय क्या मुंबल का भीर पनि संतरम करें। निर्धायित मुंबल का मुंबल्या, स की की दरवाय जनी रिव्यक्ति की पुरावर द्वारा किया तीय स्वामार्थिकरण की शाखा विवार है। स्वायक्त आदे | । मधी हो, उसकी प्रति साथ में अंतमक करें की सांग अप्रतन की सीथ और संसाहत कात पिक हे तो कमान 1,000- प्रधान, 2,000- व्यक्तित अपीलीय ज्यावाधिकरण की संरक्षा क जातन आपीली । जबसीपित साथ का स्वान्य क | |
| dragginbe | eal under sub section (1) of Secs cate in Form S.T.5 as prescribed or the order in Form S.T.5 as prescribed or | on 35 of the Fisance Act. (994, to the / ider Fole 9(1) of the Service Tax Roles, 19 | Appetiate Tribunal Simili be tiled in 94. and Shall be accompanied by a | |

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copy of the order appealed aquantst (one of which shall be certified copy) and should be accompanied by a fees of His 10002- where the amount of service tax & interest demanded in prevally levied of Rs. 5 Lakins or less, Rs.50002- where the amount of service tax & interest demanded is penalty levied in the lakins but not exceeding Rs. Feby Lakins, Rs.10,0002- where the amount of service tax & interest demanded is penalty levied in the lakins but not exceeding Rs. Feby Lakins, Rs.10,0002- where the amount of service tax & interest demanded is penalty levied is more than fifty Lakins rupers, in the form of crossed back dealt in favour of the Assistant Registrar of the bench of nonimated Public Sector Bank of the place where the bench of Tebusal in situation. / Application made for grant of single that be accompanied by a fee of Rs.5002-32 and the second

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वित्त अपितिमन, 1994 की धारा 86 की १९-४०१३में (2) एवं (24) के अन्तर्यत दर्ज की जापि अपील, सेनाकर नियमवासी, 1994, के लियम 9(2) एवं 9(2A) के लहत नियोगित प्रथम 5.1.-7 जे की ज सकेशी एवं उनके मांग चल्यूका, केन्द्रीय उत्पाद मुल्क अधवा आयुक्त (अपील), केन्द्रीय उत्पाद मुल्क इत्यार परित आदेश की प्रतिणं क्रायन की (प्रतने वे एक पनि प्रतन्तित होनी जहिए) और आयुक्त द्व्यारा तहायक आयुक्त अधल उपायुक्त, केन्द्रीय उत्पाद धन्त्रन लेगाकर, को अपीतील व्यवनाधिकारण को आतंदल देवे कांचे का लिईप देवे छाने अद्येष्ठ की पति की साथ में संसदन काली सोगी । / The append under sub section (2) and (2A) of the section 80 the Finance Act 1994, shall be filed in For ST 7 as prescribed under Rule 9 (2) & W2A) 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 online passed by the Commissionia authorizing the Assistant Commissioner or Deputy Commissioner of Central Excise/ Service Tax. to tile the appeal before the Appellate Tribunal

तीमा शुल्क, केन्द्रीय उत्पक्ष गुल्क एवं जेवाकर अपीलीय पायिकरण (संस्टेट) के पनि अपीली के सामने में केन्द्रीय उत्पक्ष शुल्क अधिविधम 1944 की पाता 35लग के अललेल, जो की जिल्लीम अधिशियम, 1954 की सारा 63 के आल्वेस नेनाकर को मी लागू की गई है, इसे आदेश के प्रति अपीक्षीय प्रतिकरण में अमीम बनाने संसन उत्पाद मुल्यरलेज का गान के 10 परिशान (10%), जब जोग एवं जुमीजा विवादित है, वा जुमीला, जब केवल जुमीला प्रतिकरण में अमीम बनाने संसन उत्पाद मुल्यरलेज का गान के 10 परिशान (10%), जब जोग एवं जुमीजा विवादित है, वा जुमीला, जब केवल जुमीला प्रतिविदित हैं, का मुमालान किया जाए, बहाते कि इस प्राप्त के अन्तर्गत जनस कि जाने आणी अधेक्षित देश सभी दम कोई स्थान में अधिक ज हो।

बेयहीच राष्ट्राट सुरुष एवं जेवालय के आपनेल प्रमान बिंग भए क्षेत्रका जो जिस्स कांग्रिस है

- पास 11 मी के अंत्रमंत स्वाम
- सेलवेट जमा की जी बड़े सामन राजि (4)
- संसर्वत उप्रस विग्रमायली के जिसक 6 के अंतर्गत देख रकत Did.
- and as fa an ann a name factor (n. 2) Million 2014 à mis à qu fact relater affants à anne facenthe ल्यनम अजी एवं अपेक को जामू त्यी क्षेत्रंग

For an append to be filed before the CEGTAT, uniter 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 journant of 10% of the duty domanded where duty or duty and penalty are in dispute, or panalty, where penalty alone is in dispute, provided the amount of pre-deposit payable woold be subject to a ceiling of Rs. 10 Crores.

- Under Central Excise and Service Tax, "Duty Demanded" shall include 00
- amount determined under Section 11 D. amount of environeus Cenvat Credit taken, (\bar{a})
- **Gird**
- amount payable under Rule 6 of the Cenval Credit Rules

- provided further that the provisions of this Section shall not apply to the stay application and appeals pending before any appellate authonic prior to the commencement of the Finance (No.2) Act, 2014.

भारत सरकार को प्रतरिशंभ आवंदन : (C)

Revision application to Govarnment of India. ভান আইম নিই পুৰবিধান্দ মানিকা নিদ্দেৱনিজিন নামানা নি, কিন্তান চলাত সুলক প্ৰতিনিধান, 1994 কি মান্ত 35EE के মধ্যম মনেকুক के असलेत जता দুনীয়া, মানে দুইক্কাং, পুনবিধান্দ আৰহন উপন্থা বিধান নামানাল, নামা নাজিলা, জাজন প্ৰথ আলল, জনত মানী, নই তিনজী-110001, কা fikter titter unfirer i

A revision application lies to the Under Secretary, to the Government of India, Revision Application Unit, Ministry of Finance, Department of Revenue, 4th Floor, Jacvan Deep Building, Parliament Strent, New Dethi 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.

पटि साल के फिसी सुकलदा के आसने से, जहां सुकलदा फिसी भारत को फिसी फलरवाने से सहार जुड़ के पारसमय के द्वीपन सा किसी अन्य कारवाने सा फिर फिसी एक असार कुछ से दुरार सामर जुड़ पारस्तान के दीपान, या किसी अंडार जुड़ में या सपारण में मान के पास्करण के द्वीपन किसी कारवाने या नियमि मेखा जुड़ में साम के मुक्तान के सामने जेंगे In case of any was of goods, where the loss occurs in transit from a factory to a waveforme or to another factory or from one

watehouse to another during the course of processing of the goods in a watehouse or in storage whether in a factory or in a wsiehnuse

स्थान के बाहा किन्ती एन्ट्र क होन को जिसोह का रहे जान के छिनिजेन में प्रमुक्त करने साल पा श्रेप्ति महे केन्द्रीय उत्पद्ध बुल्क के कुट (रिबेट) के सामने में, जो भएत के बाहर किसी राष्ट्र वा होन को जिसोत की नहीं है। / In case of rebale of duty of excess on goods exported to any country or turnitory outside India of on excessible material used in 00)

the manufacture of the goods which are exported to any country or unitary outside india

- महि डायह मुल्म मा भूगावत निय किंग मगत ने बाहर, तंगांह या भूहान को साल नियांत किंगा गया है। / (iii)
- In case of goods exponent outside India export to Nepal or Disutan, without payment of duty.

युनिधियत उत्पाद के उत्पादन युवक के जुवासल के लिए जो कुपुटी केडोट इस अधिनियम एवं इसके विकिन्ज पालपाले के लहत माल्य की गई है और ऐस संदेश जो आंगुकल (अर्थल) के दुवारा चितन अधिनियम: (स. 2), 1938 की पास 109 के दुवारा लिखा की गई लागिय आपक्ष समायाविधि पर या बाद स (iv)unita किए वर्ष है*ए*

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) Adl, 1998.

उपयोगत आयेतन की दो प्रतियां प्रयत्न सतमा EA-R से, जो की केन्द्रीय प्रत्यदन गुल्क (अपीय) नियमायली, 2001, के नियम 3 के अंतर्गत विधियदिष्ट है, इस अप्रेस के स्टोमय के 3 आह के प्रत्योत की जानी प्रतिय । उपयेगत आयेतने के लाप सुन आदेश व लगीन आदेश की दो वनिया संसरन की जानी धारीपा। साथ ही केन्द्रीय उत्यद गुल्क अधिनिक्षय, 1944 की प्रांस 35-EE के तहन निर्धायन सुरक की अदावनी के साहय के तौर पर TH-6 की प्रति ivi. जनगत की जाती शामिला (

The above application shall be made in duplicate in Form No, EA-6 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 Chaltan evidencing payment of prescribed free as prescribed under Section 35-EE of CEA, 1844, under Major Head of Account.

- पुनरीशाण आगेठन के साथ जिन्नानियित निर्थाणित भूतक की अदावती की जानी पाहिए । जहां संवयन तवन एक लाख अपने के उनने अन्य हो तो रुपए 2007 का मुमतान किया। जाए और यदि संवयन रकम एक लाख रूपने से ज्यादा हो तो रूपने 1000 न का मुमतान किया जाए । (M) The revision application shall be accompanied by a line of Rs 200% where the amount involved in Rupses One Lac or loss and Rs 10006 where the amount involved is more than Rupses One Lac.
- ult per autra $\vec{n} = \vec{p}$ and autralia es manifes \vec{k} all source and anti-time game est apaular, product de it filters and solidate per area is and go all its filter sale and its line transford within a software all the area within an information and the rank is a to case, if the order covers various counters of order in Original, fee for much O.LO, should be paid in the allowand manner, out 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 taked to avoid wrightnia work if exchange \vec{k}_{1} , i lable face of Fig. 100- for each. (D)
- गणतासोरित। ज्यापालम सुरुक अधितियास, 1975 के अनुसूती। के अनुसार मूल आदेश एवं स्थापन आदेश की पति पर निर्धापित 6.50 रुपये क (E) common spec tother rule the matrix / One copy of application or 0.10, as the case may be, and the order of the adjudicating authority shall bear a court fee stamp of Pti. 6.50 as prescribed under Scherbule-List terms of the Court Fee Act, 1975, as amended
- तीयक सुरुध, मेन्द्रीण उत्पद्ध अन्छ गां सेवाचर उन्होंनेय न्यायाधिकरण (कार्य प्रियि) विश्वमात्रमें, 1902 में वर्णित एवं अन्य संबन्धित मामलों को सन्तिर्धातित बचन करें विवास की और भार अव्यक्ति किया जाता है। / Attention is also invited to the rules covering these and other related matters contained in the Customs, Excise and Service Attention is also invited to the rules covering these and other related matters contained in the Customs, Excise and Service (F) Appellate Tribunal (Procedulo) Roles, 1982
- उध्य अनीलीय पाणिकारी को अपित हासिल करने में अमीदिन अधेपक, विरुद्ध और ल्वीनलम पानधानी के लिए, अनीलाबी विवासीय वेबलाइट 103 www.cbec.guv.in की देख सकती हैं www.cbec.gov.is wi cu needs of the provinges relating to flang of appeal to the higher appellate authority, the appellant may reter to the Departmental website www.checkgov.c

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:: ORDER IN APPEAL ::

The appeals listed below have been filed by M/s. Oswal Salt & Chemical Industries, "Maitri Bhavan", Plot No. 18, Sector 8, Gandhidham – Kachchh, Pin – 370201 (hereinafter referred to as "the appellant") against Orders-In-Original shown against 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 | V2/9/GDM /2017 | ST/469/2016-17 & 08.12.2016 | Aug, 2016 | 30,228/- |
| 02 | V2/10/GDM /2017 | ST/474/2016-17 & 08,12,2016 | Jun, 2016 | 25,542/- |
| 03 | V2/68/GDM /2017 | ST/23/2017-18 & 06.04.2017 | Sep, 2016 | 39,842/- |
| 04 | V2/69/GDM /2017 | ST/622/2016-17 & 27.02.2017 | May, 2016 | 58,700/- |

2. The facts of all appeals 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. Since the issue involved is common in nature and connected with each other, the same are being taken up together for disposal.

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

- (i) The lower adjudicating authority erred in law and on facts in rejecting refund claims of KKC and SBC to them without assigning any valid reason.
- (ii) The lower adjudicating authority further erred in rejecting refund claims without affording any opportunity to present their case and thus violating the principles of natural justice.

4. 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 has been issued to them; that the refunds of SBC & KKC were rejected without any valid ground and also submitted written submission stating as under:

4.1 The refund of SBC & KKC were rejected/denied to them without affording

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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 issue being decided against them, they must be given an opportunity to represent their case. The lower adjudicating authority has simply given a go by to such fundamental Principle of Law and rejected claims of the appellant by simply stating that "SBC & KKC is deductable from the claim" without assigning any reason as to why such claim is deductable thus violating the Principles of Natural Justice.

4.2 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 under Section 119 of the Finance Act, 2015 under Chapter–V of the said Act as under:

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, <u>a cess to be called the Swachh Bharat Cess</u>, 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) <u>The provisions of Chapter V of the Finance Act, 1994 and the rules</u> 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

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made there under, as the case may be."

4.3 The appellant also relied upon 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.

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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:-

| Swachh Bharat Cess (Minor Head) | Tax Collection | Other Receipts | Penalties | Deduct Refunds |
|---------------------------------------|-------------------|----------------|-----------|-------------------|
| 0044-00-506 | 00441493 | 00441494 | 00441496 | 00441495 |

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, <u>SBC is not a cess on Service Tax</u>. SBC shall be levied @ 0.5% on the value of taxable services.

4.4 The provisions enumerated in Chapter-V of the Finance Act, 2015 and FAQ issued by Central Board of Excise & Custom, SBC is very clear that SBC though named a cess but it 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

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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.

4.5 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. 02-02-2016 | Notification No. 12/2013-ST, dated the 1st July, 2013 amended so as to allow refund of Swachh Bharat Cess pald 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. |

4.6 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

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stand in the case under consideration is not justifiable.

4.7 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, <u>a cess to be called the Krishi Kalyan Cess</u>, <u>as service tax</u> (<u>emphasis supplied</u>) 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 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) <u>The provisions of Chapter V of the Finance Act, 1994 and the rules</u> <u>made there under, including those relating to refunds</u> 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."

4.8 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 Such S





Act, 2016, as Service tax on all the taxable services at the rate of 0.5% on the value of such taxable services.

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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.

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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 |

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

4.10 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

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Appeal No: V2/9, 10, 68 & 69/GDM/2017

| S.No. | Notification No. | Effect |
|-------|---------------------------------------|---|
| 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. |

4.11 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.

4.12 They relied on decision rendered by the 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 High 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 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 High Court has 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-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.

Findings:

5. 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 whether the impugned orders rejecting 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 correct or not.



6. The appellant has vehemently 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 to without affording sufficient opportunities to explain their case.

7. 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 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 correct and not legally sustainable at all.

8. In view of above facts, 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 giving fair and reasonable opportunities to the appellant.

8.1 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.



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9. 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 receipt of this order.

९.१ अपीलकर्ता द्वारा दर्ज की गई अपील्स का निपटारा उपरोक्त तरीके से किया जाता है।

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

मत्त्वायित. (कुमार संतोष) 06/11/2017 आर. पी. शाह आयुक्त (अपील्स) अधीसज (अपीन्स)

By Regd. Post AD

| M/s. Oswal Salt & Chemical Industries, "Maitri Bhavan", Plot No. 18, Sector-08, Gandhidham-Kutch | मे. ओसवाल साल्ट एण्ड केमिकल इंडस्ट्रीज़, "मैत्री भवन", प्लॉट न. १८, सैक्टर ०८, गांधीधाम - कच्छ |
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Copy to:

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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.