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**::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 / 2<sup>nd</sup> 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 :-**

क	अपील / फाइल संख्या Appeal / File No.	मूल आदेश नं / OIO No.	दिनांक / Date
	V2/163/GDM/2017	ST/227/2017-18	13.06.2017
	V2/164/GDM/2017	ST/336/2017-18	30.06.2017
	V2/165/GDM/2017	ST/250/2017-18	14.06.2017

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

**KCH-EXCUS-000-APP-167-TO-169-2017-18**

आदेश का दिनांक /  
Date of Order: **01.02.2018** जारी करने की तारीख /  
Date of issue: **02.02.2018**

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

ग अपर आयुक्त/ ज्युनियर आयुक्त/ उपायुक्त/ सहायक आयुक्त, केन्द्रीय उत्पाद शुल्क/ सेवाकर, राजकोट / जयनगर / गान्धीधाम। द्वारा उपरलिखित 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. Anil Minerals, 105, Golden Arcade Plot No. 141/142, Sector No. 8, Gandhidham Kutch-370201**

इस आदेश(अपील) से उपरिष्ठ कोई व्यक्ति निम्नलिखित तरीके से उपयुक्त प्राधिकारी / प्राधिकरण 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 अपीलीय न्यायाधिकरण के प्रति अपील, केन्द्रीय उत्पाद शुल्क अपिलेटिव, 1944 की धारा 35B के अंतर्गत एवं वित्त अपिलेटिव, 1994 की धारा 86 के अंतर्गत 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) वरीकरण मूल्यांकन से सम्बंधित सभी मामले सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण की विशेष पीठ, वेस्ट ब्लॉक नं 2, आर. के. पुरम, नई दिल्ली, को की जाती 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 बतलाया गया अपील के अलावा बीच सभी अपीलें सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, द्वितीय तल, बहुमाली भवन असावा अहमदाबाद- 380016 को की जाती चाहिए /

To the West regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at 2<sup>nd</sup> Floor, Bhaumali Bhawan, Asawa Ahmedabad-380016 in case of appeals other than as mentioned in para- 1(a) above.

(iii) अपीलीय न्यायाधिकरण के समक्ष अपील प्रस्तुत करने के लिए केन्द्रीय उत्पाद शुल्क (अपील) नियमावली, 2001, के नियम 6 के अंतर्गत निर्धारित किए गये फॉर्म EA-3 को चार प्रतियों में दाने किया जाता चाहिए। इनमें से कम से कम एक प्रति के साथ जहाँ उत्पाद शुल्क की श्रेणी, धारा की श्रेणी और लगाया गया जुर्माना, रुपए 5 लाख या उससे कम, 5 लाख रुपए या 50 लाख रुपए तक अथवा 50 लाख रुपए से अधिक है तो क्रमशः 1,000/- रुपए, 5,000/- रुपए अथवा 10,000/- रुपए का निर्धारित जमा शुल्क की प्रति संलग्न करें। निर्धारित शुल्क का अग्रतन, संबंधित अपीलीय न्यायाधिकरण की शाखा के सहायक रजिस्टार के नाम से किसी भी सार्वजनिक क्षेत्र के बैंक द्वारा जारी रेखांकित बैंक ड्राफ्ट द्वारा किया जाता चाहिए। संबंधित ड्राफ्ट का अग्रतन, बैंक की उस शाखा में होना चाहिए जहाँ संबंधित अपीलीय न्यायाधिकरण की शाखा स्थित है। स्थगन आदेश (स्टे ऑर्डर) के लिए अग्रतन-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 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 न्यायाधिकरण के समक्ष अपील, वित्त अपिलेटिव, 1994 की धारा 86(1) के अंतर्गत सेवाकर नियमावली, 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 संलग्न करें (इनमें से एक प्रति प्रमाणित होनी चाहिए) और इनमें से कम से कम एक प्रति के साथ, जहाँ सेवाकर की श्रेणी, धारा की श्रेणी और लगाया गया जुर्माना, रुपए 5 लाख या उससे कम, 5 लाख रुपए या 50 लाख रुपए तक अथवा 50 लाख रुपए से अधिक है तो क्रमशः 1,000/- रुपए, 5,000/- रुपए अथवा 10,000/- रुपए का निर्धारित जमा शुल्क की प्रति संलग्न करें। निर्धारित शुल्क का अग्रतन, संबंधित अपीलीय न्यायाधिकरण की शाखा के सहायक रजिस्टार के नाम से किसी भी सार्वजनिक क्षेत्र के बैंक द्वारा जारी रेखांकित बैंक ड्राफ्ट द्वारा किया जाता चाहिए। संबंधित ड्राफ्ट का अग्रतन, बैंक की उस शाखा में होना चाहिए जहाँ संबंधित अपीलीय न्यायाधिकरण की शाखा स्थित है। स्थगन आदेश (स्टे ऑर्डर) के लिए अग्रतन-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 of Rs. 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/-.

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(i) विल अडिजिस्ट, 1994 की धारा 86 की उप-धाराओं (2) एवं (2A) के अंतर्गत दाने की गयी अपील, सेवाकर नियमवली, 1994, के नियम 9(2) एवं 9(2A) के तहत निर्धारित धारा S.T. 7 में की जा सकती एवं उसके साथ आयुक्त, केन्द्रीय उत्पाद शुल्क अथवा आयुक्त (अपील), केन्द्रीय उत्पाद शुल्क द्वारा पारित आदेश की प्रतियाँ संलग्न की (जहाँ से एक प्रति परामर्श होनी चाहिए) और आयुक्त द्वारा गहावक आयुक्त अथवा आयुक्त, केन्द्रीय उत्पाद शुल्क/सेवाकर, को अपीलीय न्यायाधिकरण को आवेदन दाने करने का निर्देश देने वाले आदेश 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 सेवाकर अपीलीय प्राधिकरण (सेस्टैट) के प्रति अपील के मामले में केन्द्रीय उत्पाद शुल्क अधिनियम 1944 की धारा 35एफ के अंतर्गत, जो की विलीय अधिनियम, 1994 की धारा 83 के अंतर्गत सेवाकर को भी लागू की गई है, इन आदेश के प्रति अपीलीय प्राधिकरण में अपील करने समय उत्पाद शुल्क/सेवाकर का मात्रा के 10 प्रतिशत (10%), जब मात्रा एवं नुमांना विवादित है, या नुमांना, जब केवल नुमांना विवादित है, का भुगतान किया जाए, बशर्त कि इस धारा के अंतर्गत जमा कि जाने वाली अपेक्षित देय राशि दस करोड़ रुपए से अधिक न हो।  
केन्द्रीय उत्पाद शुल्क एवं सेवाकर के अंतर्गत 'आय विल एवं शुल्क' में विषय शामिल है।

- (i) धारा 11 डी के अंतर्गत रकम
- (ii) सेस्टैट जमा की गयी राशि
- (iii) सेस्टैट जमा नियमवली के नियम 6 के अंतर्गत देय रकम

- बशर्त यह कि इस धारा के प्राधान्य विलीय (नं. 2) अधिनियम 2014 के अंतर्गत से एवं किसी अपीलीय प्राधिकारी के समस्त विचारणीय स्वतंत्र अर्थात् 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 Cenvat Credit taken;
- (iii) amount payable under Rule 5 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.

(C) **आगत साकार को पुनरीक्षण आवेदन :**  
**Revision application to Government of India:**  
इस आदेश की पुनरीक्षण आवेदन निम्नलिखित मामलों में, केन्द्रीय उत्पाद शुल्क अधिनियम, 1994 की धारा 35EE के धारा परन्तु के अंतर्गत अथवा सचिव, आगत सेवाकर, पुनरीक्षण आवेदन इकाई, विल न्यायालय, राजस्व विभाग, चौथी मंजिल, जेवन दीप भवन, सल्ट लार्ने, नई दिल्ली-110001, को किया जाना चाहिए। / 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:

(i) यदि आगत के किसी नुकसान के मामले में, जहाँ नुकसान किसी मात्र को किसी कारखाने से भंडार गृह के परिवहन के दौरान या किसी अन्य कारखाने या फिर किसी एक भंडार गृह से दूसरे भंडार गृह परिवहन के दौरान, या किसी भंडार गृह में या भंडारण में आगत के प्रसंस्करण के दौरान, किसी कारखाने या किसी भंडार गृह में आगत 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) आगत के बाहर किसी राष्ट्र या क्षेत्र को निर्यात कर रहे आगत के विनिर्माण में प्रयुक्त किये गए या गरी गये केन्द्रीय उत्पाद शुल्क के छूट (रिबेट) के मामले में, जो आगत 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 on 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 आगत के बाहर, नेपाल या भूटान को आगत निर्यात किया गया है। / In case of goods exported outside India export to Nepal or Bhutan, without payment of duty.

(iv) सुविधित उत्पाद के उत्पादन शुल्क के भुगतान के लिए जो इच्छा केन्द्रीय अधिनियम एवं इसके विभिन्न प्राधान्यों के तहत मान्य की गई है और ऐसे आदेश जो आयुक्त (अपील) के द्वारा विल अधिनियम (नं. 2), 1998 की धारा 109 के द्वारा निर्यात की गई लसीक अथवा समावेषि पर वा बंद में पारित किए गये हैं। / 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 आवेदन की दो प्रतियाँ धारा संख्या EA-8 में, जो की केन्द्रीय उत्पाद शुल्क (अपील) नियमवली, 2001, के नियम 9 के अंतर्गत विनिर्दिष्ट है, इस आदेश के लक्ष्य के 3 महीने के अंतर्गत की जानी चाहिए। उपरोक्त आवेदन के साथ मूल आदेश व अपील आदेश की दो प्रतियाँ संलग्न की जानी चाहिए। साथ ही केन्द्रीय उत्पाद शुल्क अधिनियम, 1944 की धारा 35-EE के तहत निर्धारित शुल्क की अदावगी के अंतर्गत के तौर 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 आवेदन के साथ निम्नलिखित निर्धारित शुल्क की अदावगी की जानी चाहिए। / जहाँ संलग्न रकम एक लाख रुपये का उससे कम हो तो रुपये 200/- का भुगतान किया जाए और यदि संलग्न रकम एक लाख रुपये से ज्यादा हो तो रुपये 1000 -/ का भुगतान किया जाए। / 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 आदेश में कई मूल आदेशों का समावेश है तो प्रत्येक मूल आदेश के लिए शुल्क का भुगतान, उपरोक्त दम से किया जाना चाहिए। इस तथ्य के होते हुए भी की विद्या यही करने में बचने के लिए कस्टमरिजि अपीलीय न्यायाधिकरण को एक अपील या केन्द्रीय सरकार को एक आवेदन किया जाता है। / In case, if the order covers various numbers of order- in Original, fee for each O.I.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 filed to avoid scriptoria work if excising Rs. 1 lakh fee of Rs. 100/- for each.

(E) परामर्शोचित न्यायालय शुल्क अधिनियम, 1975, के अनुसूची-1 के अनुसार मूल आदेश एवं स्पष्टन आदेश की प्रति पर निर्धारित 6.50 रुपये का न्यायालय शुल्क टिकिट लगा होना 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 सेवाकर अपीलीय न्यायाधिकरण (कार्य विधि) नियमवली, 1982 में उल्लिखित एवं अन्य संबंधित मामलों को सम्मिलित करने वाले नियमों की और भी ध्यान आकर्षित किया जाता 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, 1982.

(G) उच्च अपीलीय प्राधिकारी को अपील दर्जित करने में संबंधित स्वतंत्र, विस्तृत और नवीनतम प्राधान्यों के लिए, अपीलीय विभागीय वेबसाइट [www.cbec.gov.in](http://www.cbec.gov.in) को देख सकते हैं। / 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](http://www.cbec.gov.in)

**:: ORDER IN APPEAL ::**

The appeals listed herein below have been filed by M/s. Anil Minerals, 105, Golden Arcade, Plot No. 141/142, Sector 8, Gandhidham (Kutch) – 370 201 (hereinafter referred to as "Appellant") against Orders-In-Original shown against each appeal no. (hereinafter referred to as "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.	V2/163/GDM /2017	ST/227/2017-18 13.06.2017	November, 2016	23,102/-
02	V2/164/GDM /2017	ST/336/2017-18 30.06.2017	February, 2017	48,844/-
03	V2/165/GDM/2017	ST/250/2017-18 14.06.2017	January - 2017	44,137/-

2. Since the issue involved is identical, above appeals are being taken up together for decision.

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 orders rejected the refund claims for the amount as shown in the above Table on the ground that there is no clarification regarding refund of SBC & KKC in Notification No. 41/2012-ST dated 29.06.2012.

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

- (i) The refund claims were rejected without giving any notice as to why such amount is being deducted. Before rejecting any refund claim or part thereof, the applicant must be given a chance to represent its case as to why such amount is admissible. The lower adjudicating authority has only mentioned that refund claimed for Swachh Bharat Cess (hereinafter referred to as "the SBC") and Krishi Kalyan Cess (hereinafter referred to as "the KKC") is deductible from the claim. Had the appellant been put to notice with reasons and legal provisions, the appellant would have replied to and explained the provisions for admissibility of refund of SBC & KKC. The 'Principle of Natural Justice' has to be followed in proceedings to be carried out, which has not been done in this case.

- (ii) The appellant filed refund claims for service tax paid on input services used in export of goods under Notification No. 41/2012-ST dated 29.06.2012. The said Notification allows refund of service tax paid on the taxable services received by an exporter of goods and used for export of goods. The enabling provisions for levy of SBC on services were incorporated under Chapter VI of Finance Act, 2015 (hereinafter referred to as "the Act") under Section 119 of the Act. Similarly, enabling provisions for levy of KKC on services were incorporated under Chapter VI of Finance Act, 2016 under Section 161 of the said Act.
- (iii) The appellant relied on a decision of Hon'ble High Court of Karnataka in the case of TVS Motor Co. Ltd. reported as 2015-TIOL-1478-HC-KAR wherein it was held that refund of Automobile Cess paid on motor vehicles exported out of India is refundable even when the same is not mentioned in the Notification No. 19/2004-CE (NT). The appellant also relied on another decision of Hon'ble High Court of Karnataka in the case of Shree Renuka Sugars Limited reported as 2014-TIOL-98-HC-KAR-CX wherein it is held that sugar cess is nothing but a duty of excise and as per Rule 3 of the Cenvat Credit Rules, credit of the duties of excise paid are available.
- (iv) They have fulfilled all conditions of the subject Notification as is also evident from the relevant findings of the lower adjudicating authority.

5. Personal hearing in the matter was attended by Shri R.C. Prasad, Consultant, who reiterated grounds of Appeal and submitted written submission and emphasized that SBC & KKC have been given status of Service Tax in Finance Act, 2015 & Finance Act, 2016 respectively; that the Government never wanted to export taxes/Cess; that there is no dispute that goods have been exported under Notification 41/2012-ST dated 29.06.2012; that since treatment to SBC & KKC has been given as that of Service Tax, there was/is no need for any clarification by CBEC or Government in this regard; that the Commissioner (Appeals), Rajkot has allowed similar appeals vide order dated 26.09.2017 and submitted copy of that OIA; that these appeals also need to be allowed.

#### **FINDINGS:**

6. I have carefully gone through the facts of the case, the impugned orders, appeals memorandum and the submissions of the appellant. The issue to be decided in the present case is as to whether the appellant is entitled for refund of SBC & KKC paid on services used for export of goods under Notification No. 41/2012-ST dated 29.06.2012 or otherwise.



SV

7. The appellant has contended that the refund claims were rejected without giving any notice/opportunity to the appellant to explain their case. I find that the refund claims were decided by the lower adjudicating authority without issuance of SCN to the appellant calling for defense reply of the appellant and without granting any opportunity of personal hearing. I find that it is a basic principle that nobody should be condemned without hearing and without affording reasonable opportunities to put forth his defense.

8. I find that the lower adjudicating authority has held that refund of SBC & KKC is required to be rejected as there is no clarification regarding refund of SBC & KKC in Notification No. 41/2012-ST, whereas, the appellant has submitted that Notification No. 41/2012-ST is clearly stating to grant refund of service tax paid on the services used for export of goods 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, and sub-section (5) of the Section 161 of the Finance Act, 2016 also stipulate that all provisions related to refund of service tax under Finance Act, 1994 shall be applicable to refund of SBC & KKC. I find that above provisions were not taken into consideration by the lower adjudicating authority in the impugned orders and hence, the impugned orders are not correct, legal and proper.

8.1 I find it relevant to refer to Notification No. 41/2012-ST dated 29.06.2012 which allows refund of Service Tax, and opening Paragraph reads as under: -

*In exercise of the powers conferred by section 93A of the Finance Act, 1994 (32 of 1994) (hereinafter referred to as the said Act) and in supersession of the notification of the Government of India in the Ministry of Finance (Department of Revenue) number 52/2011-Service Tax, dated the 30th December, 2011, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R. 945(E), dated the 30th December, 2011, except as respects things done or omitted to be done before such supersession, the Central Government, on being satisfied that it is necessary in the public interest so to do, hereby grants rebate of service tax paid (hereinafter referred to as rebate) on the taxable services which are received by an exporter of goods (hereinafter referred to as the exporter) and used for export of goods, subject to the extent and manner specified herein below, namely:-*

*(Emphasis supplied)*

*Revised*

8.2 In view of above, I find that Notification No. 41/2012-ST dated 29.06.2012 grants refund of service tax paid on the taxable services received by an exporter of goods and used for export of goods. I find that SBC is leviable by virtue of insertion of Section 119 of Finance Act, 2015, as service tax on the value of taxable services at the rates notified by the Central Government. I would like to reproduce Chapter VI inserted vide Section 119 of the Finance Act, 2015, which is as under:-

*Chapter VI*

*Swachh Bharat Cess*

**119. Swachh Bharat Cess. —**

(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 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 (32 of 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, utilise 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 thereunder, 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 thereunder, as the case may be.*

*(Emphasis supplied)*

8.3 I also find that KKC is leviable by virtue of insertion of Section 161 of Finance Act, 2016, as service tax on the value of taxable services at the rates notified by the Central Government. I would like to reproduce Chapter VI inserted vide Section 161 of the Finance Act, 2016, which is as under:-

#### CHAPTER VI

#### KRISHI KALYAN CESS

*SECTION 161. Krishi Kalyan Cess. — (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 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 (32 of 1944), 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) The provisions of Chapter V of the Finance Act, 1994 (32 of 1944) and the rules made thereunder, 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 thereunder, as the case may be.*

*(Emphasis supplied)*

8.4 I find that Section 119 of Finance Act, 2015 levied SBC on taxable services and Section 119(2) of the said Act specifies SBC as Service Tax and Section 119(5) of the said Act specifies that the provisions of refund of Service Tax under Finance Act, 1994 shall apply to refund of SBC; and Section 161 of Finance Act, 2016 levied KKC on taxable services and Section 161(2) specifies KKC as Service Tax and Section 161(5) specifies that the provisions of refund of Service Tax under Finance Act, 1994 shall apply to refund of KKC. I also find that Section 119(1) of the Finance Act, 2015 stipulated that SBC shall be levied from the date as notified by the Central Government and the Central Government issued Notification No. 22/2015-ST dated 06.11.2015 under Section 93(1) of the Act and fixed rate of SBC @ 0.5% of the value of taxable services.

8.5 It is very clear that SBC has been levied as service tax only as has been stated to in Section 119(2) of the Finance Act, 2015 and the rate of SBC @ 2% of value of taxable services proposed under the Finance Act, 2015 has been reduced to @ 0.5% of value of taxable services vide notification issued under Section 93(1) of the Finance Act, 1994 which enables central government to grant exemption from service tax. Therefore, I am of the considered view that SBC has been given status of service tax levied under the Finance Act, 1994 for the purpose of refund/rebate. In view of discussions held above, I also find ample force in the arguments of the appellant that SBC & KKC though called cess but have been given status of service tax as is evident from Section 119(2) & Section 119(5) of Finance Act, 2015 and Section 161(2) & 161(5) of Finance Act, 2016 respectively.

8.6 I find that it is settled position that the Government of India has consistently adopted policy not to export taxes. If the contention of the lower adjudicating authority is accepted then refund of SBC & KKC, even if imposed as Service Tax vide Section 119(2) of Finance Act, 2015 and vide Section 161(5) of Finance Act, 2016, shall not be allowed, which will mean that intention of legislation is to export taxes and the stated policy of the Government shall be reversed by such an interpretation. It is settled position of law that any provision of law can't be interpreted in such a way to make other provisions of law meaningless or to reverse the intention of the legislation.

9. I find that Notification No. 41/2012-ST dated 29.06.2012 has been issued under Section 93A of the Act which gives Central Government power to grant rebate. The said Notification No. 41/2012-ST grants refund of service tax paid on the taxable services used for export of goods by an exporter. Since SBC &



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KKC, both have been treated as service tax, as detailed in Para 7 to Para 7.5, the rebate of SBC & KKC is allowable under Notification *ibid*.

9.1 I also find that Notification No. 39/2012-ST dated 20.12.2012 granting refund of service tax paid on services used in providing export of services has been amended vide Notification No. 3/2016-ST dated 03.02.2016 and Notification No. 29/2016-ST dated 26.05.2016, so as to allow refund of SBC and KKC; similarly, Notification No. 12/2013-ST dated 01.07.2013 allowing refund of service tax paid on specified services used in SEZ has also been amended vide Notification No. 2/2016-ST dated 03.02.2016 and Notification No. 30/2016-ST dated 26.05.2016, so as to allow refund of SBC & KKC, however no such amendment has been made in Notification No. 41/2012-ST dated 29.06.2012 because no amendment is required as explained below:-

9.2 I also find that Notification No. 39/2012-ST dated 20.12.2012 has allowed refund of service tax and cess and Explanation 1 reads as under –

*Explanation-1*

*(a) service tax means service tax leviable under Section 66 or Section 66B of the Finance Act, 1994;*

*(b) education cess means education cess on taxable service levied under section 91 read with section 95 of the Finance (No.2) Act, 2004 (23 of 2004);*

*(c) Secondary & Higher Education Cess means Secondary & Higher Education Cess on taxable services levied under section 136 read with section 140 of the Finance Act, 2007 (22 of 2007).*

*(Emphasis supplied)*

9.3 Therefore, there was need to add SBC & KKC as clause (d) and clause (e) vide Notification No. 3/2016-ST dated 03.02.2016 and Notification No. 29/2016-ST dated 26.05.2016 to get it added as because only Service Tax leviable under Section 66 or Section 66B of the Finance Act, 1994 had been covered under clause (a) and not Service Tax imposed under Section 119 of the Finance Act, 2015 and Service Tax imposed under Section 161 of Finance Act, 2016.

9.4 Notification No. 12/2013-ST dated 01.07.2013 also has specifically provided refund of service tax leviable under Section 66B of the Finance Act, 1994 whereas SBC & KKC have been levied under Section 119 of the Act inserted vide

Finance Act, 2015 and Section 161 of the Act inserted vide Finance Act, 2016, respectively, hence there was legal requirement to amend Notification No. 12/2013-ST vide Notification No. 2/2016-ST and Notification No. 30/2016-ST dated 26.05.2016 to include SBC & KKC for refund under Notification No. 12/2013-ST as SBC & KKC are not leviable under Section 66B of the Finance Act, 1994; whereas Notification No. 41/2012-ST dated 29.06.2016 has provided for refund of service tax without specifying leviable under Section 66 or Section 66B of the Finance Act, 1994 and hence, no amendment in Notification No. 41/2012-ST was/is legally required to be undertaken.

10. In view of above factual & legal position, I set aside the impugned orders and allow the appeals filed by the appellant.

१०.१. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।

10.1. The appeals filed by the appellant stands disposed off in above terms.

*(कुमार संतोष)*  
11/21/2018  
आयुक्त (अपील्स)

**By Speed Post**

To,

M/s. Anil Minerals, 105, Golden Arcade, Plot No. 141/142, Sector 8, Gandhidham (Kutch) – 370 201	मे. अनिल मिनरलस, प्लॉट नं १४१, १४२, सेक्टर ८, गांधीधाम (कच्छ) – ३७० २०१
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**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.