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::आयुक्त (अपील) 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



सत्यमेव जयते

रजिस्टर्ड डाक ए. डी. द्वारा :-

क	अपील / फाइल संख्या / Appeal / File No.	मूल आदेश सं / O/O No.	दिनांक / Date
	V2/76,77,78,79/GDM/2016	ST/410,423,424,425/2016-17	27.10.2016
	V2/80,81/GDM/2016	ST/486,487/2016-17	08.12.2016
	V2/82/GDM/2016	ST/422/2016-17	27.10.2016

4965 to 4968

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

KCH-EXCUS-000-APP-015-TO-21-2017-18

आदेश का दिनांक /
Date of Order: **25.09.2017** जारी करने की तारीख /
Date of issue: **26.09.2017**

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

ग अन्त आयुक्त/संयुक्त आयुक्त/उप-आयुक्त/सहायक आयुक्त, केन्द्रीय उत्पाद शुल्क/सेवा कर, राजकोट / जामनगर / गण्डीधम। द्वारा उपरलिखित ज्ञापन आदेश से उत्पन्न /
Arising out of above mentioned O/O 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. SRK Chemical Ltd., Room No. 11, 2nd Floor, Vandana Commercial, Centra, Plot No. 280, Ward No. 12/B, Ghandhidham, Dist. Kutch-370201

इस आदेश(अपील) से व्यथित 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 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) बर्खास्त मूल्यांकन से सम्बन्धित सभी मामलों सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय 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 अपीलीय न्यायाधिकरण (सिस्टर) की पश्चिम क्षेत्रीय पीठिका, द्वितीय तल, बहामनी भवन असावा अहमदाबाद-380016 को की जानी चाहिए। /
To the West regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at 2nd 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 अन्तर्गत निर्धारित किन्तु नए फॉर्म EA-3 को चार प्रतियों में दर्ज किया जाना चाहिए। इनमें से कम से कम एक प्रति के साथ, जहां उत्पाद शुल्क की राशि, जवाब की राशि और लगाया गया जुर्माना, रुपा 5 लाख या उससे कम, 5 लाख रुपा या 50 लाख रुपा तक अथवा 50 लाख रुपा से अधिक है तो क्रमशः 1,000/- रुपये, 5,000/- रुपये अथवा 10,000/- रुपये का निर्धारित जमा शुल्क की प्रति सलगन करे। निर्धारित शुल्क का भुगतान, संबंधित अपीलीय न्यायाधिकरण की शाखा के सहायक रजिस्ट्रार के नाम से किसी भी सार्वजनिक क्षेत्र के बैंक द्वारा जारी रेकॉग्निज बैंक ड्राफ्ट द्वारा किया जाना चाहिए। संबंधित ड्राफ्ट का भुगतान, बैंक की उस शाखा में होना चाहिए जहां संबंधित अपीलीय न्यायाधिकरण की शाखा स्थित है। स्थगन आदेश (स्टे ऑर्डर) के लिए आवेदन-पत्र के साथ 500/- रुपा 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 अधिनियम, 1994 की धारा 86(1) के अन्तर्गत 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 सलगन करे (इनमें से एक प्रति प्रमाणित होनी चाहिए) और इनमें से कम से कम एक प्रति के साथ, जहां सेवाकर की राशि, जवाब की राशि और लगाया गया जुर्माना, रुपा 5 लाख या उससे कम, 5 लाख रुपा या 50 लाख रुपा तक अथवा 50 लाख रुपा से अधिक है तो क्रमशः 1,000/- रुपये, 5,000/- रुपये अथवा 10,000/- रुपये का निर्धारित जमा शुल्क की प्रति सलगन करे। निर्धारित शुल्क का भुगतान, संबंधित अपीलीय न्यायाधिकरण की शाखा के सहायक रजिस्ट्रार के नाम से किसी भी सार्वजनिक क्षेत्र के बैंक द्वारा जारी रेकॉग्निज बैंक ड्राफ्ट द्वारा किया जाना चाहिए। संबंधित ड्राफ्ट का भुगतान, बैंक की उस शाखा में होना चाहिए जहां संबंधित अपीलीय न्यायाधिकरण की शाखा स्थित है। स्थगन आदेश (स्टे ऑर्डर) के लिए आवेदन-पत्र के साथ 500/- रुपा 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 fees of Rs. 1000/- where the amount of service tax & interest demanded & penalty levied of Rs. 5 Lakhs or less, Rs.5000/- where the amount of service tax & interest demanded & penalty levied is more than five 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) **वित्त अधिनियम, 1994 की धारा 86 की उप-धाराओं (2) एवं (2A) के अंतर्गत दंडों की सही अपील, सेवाकर विधायिका, 1994, के नियम 9(2) एवं 9(2A) के तहत निर्धारित पत्र S.T.-7 में की जा सकती एवं उसके साथ अपील, केन्द्रीय उत्पाद शुल्क अध्यापक (अपील), केन्द्रीय उत्पाद शुल्क द्वारा पारित आदेश की प्रतियाँ संलग्न करें (उसमें दो एक प्रति प्रामाणिक होनी चाहिए) और अनुसूचित द्वारा संशुद्ध अपील अध्यापक, केन्द्रीय उत्पाद शुल्क/सेवाकर, को अपील न्यायाधिकरण को आवेदन दंड करने का निर्देश देने वाले आदेशों 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 अपील न्यायाधिकरण (सेस्टैट) के प्रति अपील के मामले में केन्द्रीय उत्पाद शुल्क अधिनियम 1944 की धारा 35ए के अंतर्गत, जो की वित्तीय अधिनियम, 1994 की धारा 83 के अंतर्गत सेवाकर को भी लागू की गई है, इन आदेशों के प्रति अपील न्यायाधिकरण में अपील करने समय उत्पाद शुल्क/सेवाकर का मूल्य के 10 प्रतिशत (10%), जब साथ एवं जुड़ता विवादित है, या जुड़ता, जब केवल जुड़ता विवादित है, का भुगतान किया जाए, बशर्त कि इस धारा के अंतर्गत जमा कि जाने वाली अपील दंड राशि दस करोड़ रुपए से अधिक न हो।**
केन्द्रीय उत्पाद शुल्क एवं सेवाकर के अंतर्गत 'आव किए गए शुल्क' में निम्न शामिल है
 - (i) धारा 11 डी के अंतर्गत रकम
 - (ii) सेनायट जमा की ली गई राशि राशि
 - (iii) सेनायट जमा निवृत्तियों के नियम 6 के अंतर्गत दंड रकम**- बशर्त यह कि इस धारा के अंतर्गत विवादित (स. 2) अधिनियम 2014 के अंतर्गत नए किये अपील न्यायाधिकरण के अंतर्गत विवादित स्थान पर ही अपील को जमा नहीं होवे।**
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 6 of the Cenvat Credit Rules**- provided further that the provisions of this Section shall not apply to the stay application and appeals pending before any appellate authority prior to the commencement of the Finance (No.2) Act, 2014.**
- (C) **भारत सरकार को पुनरीक्षण आवेदन :**
Revision application to Government of India:
इस आदेश की पुनरीक्षण न्यायाधिकरण निर्धारित मामलों में, केन्द्रीय उत्पाद शुल्क अधिनियम, 1994 की धारा 35EE के प्रथम पारंग के अंतर्गत अन्तःस्थित, भारत सरकार, पुनरीक्षण आवेदन इकाई, वित्त मंत्रालय, राज्य विभाग, चौथी मंजिल, जीवन टॉप अवन, संसद मार्ग, 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 cases, 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 भंडार गृह के परामर्श के दौरान या किसी अन्य कारखाने या फिर किसी एक भंडार गृह से दूसरे भंडार गृह परामर्श के दौरान, या किसी भंडार गृह में या भंडारण में माल के परामर्श के दौरान, किसी कारखाने या किसी भंडार 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 भरी 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 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 भारत के 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) अनुमिष्ट उत्पाद के उत्पादन शुल्क के भुगतान के लिए जो इप्टी क्रेडिट इस अधिनियम एवं इसके विभिन्न प्रावधानों के तहत मान्य की गई है और ऐसे आदेश जो आदकल (अपील) के द्वारा वित्त अधिनियम (नं. 2), 1998 की धारा 109 के द्वारा नियत की गई तरीक अध्यापक/न्यायाधिकरण पर वा बंद में पारित किए गए 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 प्रतियां पत्र संख्या EA-8 में, जो की केन्द्रीय उत्पादन शुल्क (अपील) विधायिका, 2001, के नियम 9 के अंतर्गत विनिर्दिष्ट है, इस आदेश के संशुद्ध के 3 माह के अंतर्गत की जानी चाहिए। उपरोक्त आवेदन के साथ मूल आदेश व अपील आदेश की दो प्रतियां संलग्न की जानी चाहिए। साथ ही केन्द्रीय उत्पाद शुल्क अधिनियम, 1944 की धारा 35-EE के तहत निर्धारित शुल्क की अद्यतनी के साथ-साथ 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 DIO 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 अद्यतनी की जानी चाहिए।
जहाँ संलग्न रकम एक लाख रुपये या 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 इस से किया जाना चाहिए। इस तथ्य के होते हुए भी की प्रिया यही कार्य से बचने के लिए वित्तीय अपील न्यायाधिकरण को एक अर्जित 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, notwithstanding 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) न्यायाधिकरण न्यायालय शुल्क अधिनियम, 1975, के अनुसूची-1 के अनुसूचित मूल आदेश एवं स्थगन आदेश की प्रति पर निर्धारित 6.50 रुपये का न्यायालय शुल्क टिकट 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-I in terms of the Court Fee Act, 1975, as amended.
 - (F) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपील न्यायाधिकरण (कार्य विधि) विधायिका, 1982 में वर्णित एवं अन्य संबंधित मामलों को सम्बन्धित करने वाले नियमों की और भी ध्यान अवगत 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) उपर्युक्त अपील न्यायाधिकरण को अपील दंडित करने से संबंधित व्यापक, विस्तृत और अद्यतन प्रावधानों के लिए, अपील न्यायाधिकरण वेबसाइट 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

:: ORDER IN APPEAL ::

The appeals listed herein below have been filed by M/s. SRK Chemicals Limited, "Neelkanth", BBZ-S-60, Zanda Chowk, Gandhidham (Kutch) - 370201 (hereinafter referred to as "the appellant") against Orders-In-Original No. shown against each appeal no. (hereinafter referred to as "the impugned order") passed by the Assistant Commissioner, Service Tax Division, Gandhidham-Kutch (hereinafter referred to as "the lower adjudicating authority").

Sr. No.	Appeal File No.	Order-In-Original No. & Date	Period of Refund claim	Amount of refund claim rejected (in Rs.)
01.	V2/76/GDM /2016	ST/410/2016-17 dated 27.10.16	December, 2015	7,783
02	V2/77/GDM /2016	ST/423/2016-17 dated 27.10.16	July, 2016	35,805
03	V2/78/GDM /2016	ST/424/2016-17 dated 27.10.16	July, 2016	20,327
04	V2/79/GDM /2016	ST/425/2016-17 dated 27.10.16	August, 2016	83,824
05	V2/80/GDM /2016	ST/486/2016-17 dated 08.12.16	September, 2016	77,984
06	V2/81/GDM /2016	ST/487/2016-17 dated 08.12.16	September, 2016	1,13,022
07	V2/82/GDM /2016	ST/422/2016-17 dated 27.10.16	July, 2016	22,095

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

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 order rejected the rebate claim for the amount as shown in the above Table.

3. 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") is deductible from the claim. Had the appellant been put to any notice with reasons and legal provisions, the appellant must have replied to and explained the provisions for admissibility of refund of SBC. The 'Principle of Natural Justice' has to be followed in any of the judiciary proceedings to be carried out, which has not been allowed 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 rebate 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.

- (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 rebate 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.

4. Personal hearing in the matter was attended to by Shri R.C. Prasad, Consultant, who reiterated grounds of Appeal and submitted detailed written submissions emphasizing that Government has not intended to export Service Tax or SBC and hence refund of SBC should be granted; that Notification No. 41/2012-ST is clearly stating rebate of service tax paid and sub-section (2) of Section 119 of the Finance Act, 2015 as well as sub-section (2) of Section 161 of the Finance Act, 2016 very clearly say SBC and Krishi Kalyan Cess (hereinafter referred to as "the KKC") as service tax respectively; that sub-section (5) of Section 119 of the Finance Act, 2015 and Section 161 of the Finance Act, 2016 also stipulate all provisions related to refund under Finance Act, 1994 shall be applicable to SBC & KKC; that had the Government/legislation intended not to grant refund of SBC/KKC then refund provisions of the Finance Act, 1994 would not have been made applicable vide sub-section 5 in the Finance Act, 2015 and the Finance Act, 2016; that availability of cenvat credit is no criterion to decide eligibility of refund/rebate; that Notifications No. 39/2012-ST dated 20.06.2012 and 12/2013-ST dated 01.07.2013 were required to be amended vide Notification No. 3/2016-ST and 2/2016-ST both dated 03.02.2016, respectively because service tax mentioned in the Notifications was service tax leviable under Section 66 or Section 66B of the Finance Act, 1994 whereas no such explanation/specification has been stipulated under Notification No. 41/2012-ST dated 29.06.2012; that FAQ released by CBEC has clarified at Question No. 1 itself states that SBC is a service tax; that in view of above clarification/enactment of the Finance Act, 2015 and the Finance Act, 2016 read with Notification No. 41/2012-ST, rebate claims of SBC paid may be allowed.

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FINDINGS:

5. I have carefully gone through the facts of the case, the impugned order, appeal 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 rebate of SBC paid on services used for export of goods under Notification No. 41/2012-ST dated 29.06.2012 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 the arguments made by the appellant. I find that the refund claims were decided by the lower adjudicating authority without issuance of SCN to the appellant calling for defence reply of the appellant and without granting opportunities of personal hearing to the appellant. I find that it is basic principle of law that nobody should be condemned without hearing and without affording reasonable opportunities to put forth his defence. It is settled position of law that the refund claims should not be rejected without issuance of SCN demonstrating reasons for denial/restriction of refund claim and without affording sufficient opportunities to explain their case.

6.1 The appellant has also submitted that that Notification No. 41/2012-ST is clearly stating rebate of service tax paid and sub-section (2) of Section 119 of the Finance Act, 2015 and sub-section (2) of Section 161 of the Finance Act, 2016 clearly stipulate SBC and KKC as service tax respectively; that sub-section (5) of Section 119 of the Finance Act, 2015 and Section 161 of the Finance Act, 2016 also stipulate that all provisions related to refund under Finance Act, 1994 shall be applicable to SBC & KKC. I find that the above legal provisions were not taken into consideration by the lower adjudicating authority in the impugned orders as because no SCN or personal hearing notices were issued to the appellant. Therefore, I find that the impugned orders are not sustainable, the same being non speaking orders as far as rejecting refund claims of SBC & KKC is concerned.

6.2 In view of the above facts, I am of the considered view that the impugned orders need to be set aside and the matter needs to be remanded back to the lower adjudicating authority to pass speaking and reasoned orders offering fair opportunities to the appellant.




6.3 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.

7. In view of the above facts, I set aside the impugned orders and allow the appeals by way of remand with direction to the appellant to submit their written submissions within two months of the receipt of this order.

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

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


(कुमार संतोष)
आयुक्त (अपील्स)

By Regd. Post AD

To,

M/s. SRK Chemicals Limited,
"Neelkanth", BBZ-S-60,
Zanda Chowk,
Gandhidham (Kutch) - 370201

मे. एस.आर.के. केमिकल्स लिमिटेड,
"नीलकंठ" बी.बी.जेड.-एस-६०,
जंदा चौक,
गांधीधाम (कच्छ) - ३७० २०१

Copy to:

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

6.3 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.


7. In view of the above facts, I set aside the impugned orders and allow the appeals by way of remand with direction to the appellant to submit their written submissions within two months of the receipt of this order.

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

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

सत्यापित,


प्रवीण पापट,
26/09/2017


(कुमार संतोष)
आयुक्त (अपील्स)
25/9/2017

अधीक्षक (अपील)

By Regd. Post AD

To,

M/s. SRK Chemicals Limited,
"Neelkanth", BBZ-S-60,
Zanda Chowk,
Gandhidham (Kutch) - 370201

में. एस. आर. के. केमिकल्स लिमिटेड,
"नीलकंठ" बी.बी. जेड. -एस-६०,
जंडा चौक,
गांधीधाम (कच्छ) - ३७० २०१

Copy to:

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