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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 Bhawan,  
रेस कोर्स रिंग रोड, / Race Course Ring Road,  
राजकोट / Rajkot - 360 001

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

**रजिस्टर्ड डाक ए. डी. द्वारा :-**

क	अपील / काइल संख्या Appeal / File No.	मूल आदेश नं / OID No.	दिनांक / Date
	V2/271/RAJ/2016	DC/JAM/R-271/2016-17	15.11.2016

633 76 6159

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

**RAJ-EXCUS-000-APP-116-2017-18**

आदेश का दिनांक / 06.11.2017 जारी करने की तारीख / 08.11.2017  
Date of Order: Date of issue:

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

ग अथ आयुक्त/सहायक आयुक्त/उपआयुक्त/सहायक आयुक्त, केन्द्रीय उत्पाद शुल्क/सेवाकर, राजकोट / जयनगर / गान्धिधाम द्वारा उपरलिखित जारी मूल आदेश से गुजिन /

Arising out of above mentioned OID 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. Precision Brass Works Pvt. Ltd., Plot No. 3645 & 3646., GIDC Phase-III, Dared, Jamnagar-361004**

इस आदेश(अपील) से असंतुष्ट कोई व्यक्ति निम्नलिखित तरीके से उपयुक्त प्राधिकारी / प्राधिकरण के समक्ष अपील दाखल 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 अपीलार्थ न्यायाधिकरण के प्रति अपील, केन्द्रीय उत्पाद शुल्क अधिनियम, 1944 की धारा 35B के अन्तर्गत एवं वित्त अधिनियम, 1994 की धारा 86 के अन्तर्गत निम्नलिखित अर्थ में 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) सर्वोच्च न्यायालय से सम्बन्धित सभी मामलों सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलार्थ 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 बतलाया गया अपील के अलावा सब सभी अपील सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलार्थ न्यायाधिकरण (सिस्टम) की पश्चिम क्षेत्रीय पीठ, द्वितीय तल, बहुमाली भवन असावा अहमदाबाद, 360016 को की जानी चाहिए।  
To the West regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at, 2<sup>nd</sup> Floor, Bhaumali Bhawan, Asawa Ahmedabad-360016 in case of appeals other than as mentioned in para- 1(a) above
- (iii) अपीलार्थ न्यायाधिकरण के समक्ष अपील प्रस्तुत करने के लिए केन्द्रीय उत्पाद शुल्क (अपील) नियमावली, 2001 के नियम 6 के अन्तर्गत निर्धारित फिल हॉर फॉर्म EA-3 को धारा परिशिष्ट में दर्ज किया जाना चाहिए। इसमें से कम है कम एक प्रति के साथ, जहाँ उत्पाद शुल्क की जमा अंश की सीमा और जमागत सेवा शुल्क: रुपये 5 लाख या उससे कम; 5 लाख अथवा 50 लाख अथवा 50 लाख अथवा से अधिक है तो क्रमशः 1,000/- रुपये, 5,000/- रुपये अथवा 10,000/- रुपये का निर्धारित जमा शुल्क की प्रति लगाना की। निर्धारित शुल्क का अभाव में संबंधित अपीलार्थ न्यायाधिकरण की हाजरा के सहायक रजिस्ट्रार के नाम से किसी भी सार्वजनिक बैंक के बैंक द्वारा जारी चेक/बैंक ड्राफ्ट द्वारा किया जाना चाहिए। संबंधित शुल्क का अभाव में, बैंक की उस हाजरा में होना चाहिए जहाँ संबंधित अपीलार्थ न्यायाधिकरण की हाजरा स्थित है। अंततः आदेश (स्टे ऑर्डर) के लिए आदेश-पत्र के साथ 500/- रुपये 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/-
- (iv) अपीलार्थ 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 धारा परिशिष्ट में दर्ज किया जाना चाहिए। इसमें से कम है कम एक प्रति के साथ, जहाँ उत्पाद शुल्क की जमा अंश की सीमा और जमागत सेवा शुल्क: रुपये 5 लाख या उससे कम; 5 लाख अथवा 50 लाख अथवा 50 लाख अथवा से अधिक है तो क्रमशः 1,000/- रुपये, 5,000/- रुपये अथवा 10,000/- रुपये का निर्धारित जमा शुल्क की प्रति लगाना की। निर्धारित शुल्क का अभाव में संबंधित अपीलार्थ न्यायाधिकरण की हाजरा के सहायक रजिस्ट्रार के नाम से किसी भी सार्वजनिक बैंक के बैंक द्वारा जारी चेक/बैंक ड्राफ्ट द्वारा किया जाना चाहिए। संबंधित शुल्क का अभाव में, बैंक की उस हाजरा में होना चाहिए जहाँ संबंधित अपीलार्थ न्यायाधिकरण की हाजरा स्थित है। अंततः आदेश (स्टे ऑर्डर) के लिए आदेश-पत्र के साथ 500/- रुपये 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. 1,000/- 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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**:: ORDER IN APPEAL ::**

The present appeal filed by M/s. Precision Brass Works Pvt. Ltd., Plot No. 3645 & 3646, GIDC, Phase-III, Dared, Jamnagar-361004 (hereinafter referred to as "the appellant") is against Order-In-Original No. DC/JAM/R-271/2016-17 dated 15.11.2016 (hereinafter referred to as "impugned orders") passed by the Deputy Commissioner, Central Excise & Service Tax Division, Jamnagar (hereinafter referred to as "lower adjudicating authority").

2. The appellant is holding Service Tax Registration No. AAACP4265BSD001. The facts of the case are that the appellant filed a rebate claim for Rs. 1,32,176/- under para (3) of Notification No.41/2012-ST dated 29.06.2012 (hereinafter referred to as "the Notification") as amended vide Notification No. 01/2016-ST dated 03.02.2016. The rebate claim was in respect of Service Tax paid on the taxable services received under category of Courier Service and used for export of goods viz. Brass Electrical Items, Brass Terminals & Aluminium Terminal Block during the period from October, 2015 to June, 2016. The appellant claimed Service Tax including Swachh Bharat Cess (hereinafter referred to as "SBC") which was actually not paid on any specific services and hence not admissible as per the condition of para 3(a) of the Notification as the same provides for rebate of Service Tax and not SBC which is levied under Section 119 of the Finance Act, 2015.

3. The above observations culminated into issuance of Show Cause Notice No. V.85(18)43/Refund/2016-17 dated 19.10.2016 wherein it was proposed to reject the rebate claim of Rs. 3,954/- pertaining to SBC, in terms of Section 93A of the Finance Act, 1994 read with the Notification. It was also proposed to restrict the rebate claim of Rs. 1,32,176/- (Service Tax + SBC) to Rs. 1,28,222/- (Service Tax only). The lower adjudicating authority vide impugned order No. DC/JAM/R-271/2016-17 dated 15.11.2016 sanctioned rebate claim of Rs. 1,28,222/- pertaining to Service Tax and rejected rebate claim of Rs. 3,954/- pertaining to SBC.

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

- (i) The lower adjudicating authority erred in passing the order as it has been passed without considering the facts of the case and material available on record as well as the various details provided by the appellant which has not been countered.

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- (ii) The lower adjudicating authority erred in issuing Show Cause Notice for rejection of the refund claim of SBC without appreciating the facts that Show Cause Notice was contradictory to the provisions of Finance Act and is unsustainable in law as the SBC is nothing but Service Tax as defined under Chapter VI of the Finance Act, 2015.
- (iii) The lower adjudicating authority erred in not allowing or rejecting rebate claim of SBC despite the fact that nature of the SBC is nothing but a levy under Service Tax and without considering the fact that the provisions of Finance Act related to refund & exemption which is applicable to Service Tax would also apply to SBC as defined under Section 119(5) of the Finance Act, 2015.
- (iv) The lower adjudicating authority erred while ignoring the provisions of Section 119(2) which clearly states that SBC shall be collected and levied in accordance with the provisions of the act as Service Tax and thus when Service Tax is refundable, SBC is also refundable.
- (v) The lower adjudicating authority erred in not considering the intention of the Government not to collect tax from exporters for export and same was clarified vide Circular No. 134/3/2011-ST dated 08.04.2011, which was related to grant of refund of Education Cess. The same is also required to be considered for refund of SBC.

5. Personal hearing in the matter was attended to by Shri Sagar Shah, CA who reiterated grounds of appeal and submitted that his submissions in Appeals No. V2/256, 257, 258/RAJ/2016 are applicable in this appeal also as the issue is exactly similar. SBC is nothing but Service Tax for the purpose of collection, rebate/refund and hence their appeal should be allowed.



**FINDINGS:**

6. 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, as amended, or not.

7. The appellant has contended that the refund claims were rejected without considering the facts of the case and material available on record as well as the various details/contentions/arguments provided by the appellant; that the nature of SBC is nothing but a levy under Service Tax and the provisions of Finance Act, 1994 related to refund applicable to Service Tax



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would also apply to SBC. They also relied on CBEC Circular No. 134/3/2011-ST dated 08.04.2011.

8. I find that the lower adjudicating authority has held that refund of SBC are required to be rejected as there is no clarification regarding rebate of SBC for export under Notification No. 41/2012-Service Tax. The appellant has submitted that Notification No. 41/2012-ST is clearly stating to grant rebate of service tax paid on the services used for export of goods and sub-section (2) of Section 119 of the Finance Act, 2015 clearly stipulate SBC as service tax; that sub-section (5) of Section 119 of the Finance Act, 2015 stipulate that all provisions related to refund of service tax under Finance Act, 1994 shall be applicable to refund of SBC. I find that above provisions were interpreted wrongly by the lower adjudicating authority and therefore, the impugned order is not legally sustainable.

8.1 It would be important to refer Notification No. 41/2012-ST dated 29.06.2012 which allows refund of Service Tax, and opening Paragraph is 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)

8.2 In view of above, I find that Notification No. 41/2012-ST dated 29.06.2012 grants rebate 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. To

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understand levy of SBC, let's take a look at Chapter VI inserted vide Section 119 of the Finance Act, 2015 reproduced hereunder:

*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 From above, 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) specifies that the provisions of refund of Service Tax under Finance Act, 1994 shall apply to refund of SBC. Therefore, I find ample force in the arguments of the appellant that the SBC though is called cess but has been given status of service tax is evident from Section 119(2) & Section 119(5) of Finance Act, 2015.

9. I find that it is also 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, even if imposed as Service Tax vide Section 119(2) of Finance Act, 2015, shall not be allowed meaning thereby is 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 and to reverse the intention of the legislation.

10. 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 rebate of service tax paid on the taxable services used for export of goods by an exporter. Since SBC has been treated as service tax, as detailed above, the rebate of SBC is allowable under Notification *ibid*.

10.1 I also find that Notification No. 39/2012-ST dated 20.12.2012 granting rebate 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; 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, however no such amendment has been made in Notification No. 41/2012-ST dated 29.06.2012. I find that Notification No. 39/2012-ST dated 20.12.2012 has allowed refund of service tax and cess and Explanation 1 reads -

(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)


10.2 Hence, there was need to add SBC in clause (d) 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 only Service Tax leviable under Section 66 or Section 66B of the Finance Act, 1994 has been covered under clause (a) and not Service Tax imposed under Section 119 of the Finance Act, 2015.

10.3 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 have been levied under Section 119 of the Act inserted vide Finance Act, 2015, 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 for refund under Notification No. 12/2013-ST as SBC is 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 required to be undertaken.

11. In view of above factual & legal position, I set aside the impugned order to the extent of rejecting rebate claim of Rs. 3,954/- of SBC and allow the appeal filed by the appellant.

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

11.1 The appeal filed by the appellant stands disposed off in above terms.

  
(कुमार संतोष)  
आयुक्त (अपील्स)

By Regd. Post AD



To,

M/s. M/s. Precision Brass Works Pvt. Ltd.,  
Plot No. 3645 & 3646, GIDC, Phase-III,  
Dared, Jamnagar-361004

મે. પ્રેસિશન બ્રાસ વર્ક્સ પ્રાઇવેટ લિમિટેડ,  
પ્લોટ નં. ૩૬૪૫ એવં ૩૬૪૬, જી.આઈ.ડી.સી.  
ફેઝ-III, દારેડ, જામનગર-૩૬૧૦૦૪.

Copy to:

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