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

दवितीय तस, जी एस टी भवन / 2" Floor, GST Blucum. 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 :-

V2/271/RAJ/2016 33 X

मूल आदेश स /

DC/JAM/R-271/2016-17

that at a

15.11.2016

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

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

आदेश का दिनाक / Date of Order:

06.11.2017

जारी करने की लारीख Date of issue:

08.11.2017

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

अपर आयुक्तः संयुक्तः आयुक्तः उपायुक्तः सहयकः आयुक्तः केन्द्रीय उत्पादं युक्तः संयोकः, एजकोटः / जामनगरः (गाणिपामः) द्वारा उपरसिवितः जारी ग मूल आदेश से सुजित /

Arrang out of above mentioned OIIO issued by Additional/Joint/Deputy/Assistant Commissioner, Central Excise / Service Tex. Rekot / Jamnagar / Gandhidham

अपीलकर्ता & प्रतिवादी का नाम एवं पता /Name&Address of the Appellant & Respondent -E M/s. Precision Brass Works Pvt. Ltd.., Plot No. 3645 & 3646., GIDC Phase-III, Dared. Jamnagar-361004

इस आदेश(अपीरा) से रजीवत कोई त्यक्ति विस्तातियित तरीय से उपयुक्त पाणिकारी / पाणिकारण के सामन अपीर दाया कर सकता है। Any person aggrieved by this Order-in-Appeal may file an appeal to the appropriate authority in the following way

सीमा शुरूक ,केन्द्रीय उत्पाद शुरूक एवं सेवाकर अपीर्णाय स्थापाधिकरण के पति अपीत कर्नीय उत्पाद शुरूक अधिरियम 1944 की धारा 358 के असमेत एवं किस अधिरियम 1994 की धारा 86 के असमेत निरमाणिखिना असम की जा सकती है ए (A)

Appeal to Customs, Excise & Service Tax Appellate Tribunal under Section 358 of CEA 1944 / Under Section 86 of the Finance Act. 1994 an appeal lies to-

वर्गीकरण मृत्यांकत से अञ्चान्यतः अभी भागते शीमा शुनक, तेन्द्रीय उत्पादन गुरुक एवं मैशकर अपीसीय स्थायाधिकरण की विशेष पीठ, वेस्ट दार्गक म 2. आ. के पुरम, नई दिल्ली, को की जानी चाहिए ए 111

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.

उपरोजन परिच्छेद 1(a) में बनाए गए अपीतों के आंताल क्षेत्र अभी अपीते सीमा कुल्क, केदीय अपाद कुल्क एवं सेवाकर अपीतीय आयाणिकरण (मिन्टेट) की परिचम सेनीय पीठिकर , ट्वितीय तन बहुमानी भवन असावों अहमदासाद अः=१६ को की जानी पाहिए ४ (14)

To the West regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at 2" Floor, Bhaumal Bhawan, Asarwa Ahmedabed 380016 in case of appeals other than as mentioned in pane. I(a) above

अमीलीय न्यामिक्सिय के समस्त अपील प्रस्तृत करने के लिए केल्द्रीय उत्पाद गुल्क (अमील) विरामागती, 2001 के पिएम 6 के अनमेल विमानित पिका कर्म पाय EA-3 को यह प्रतियों से दर्ज किया अला पाहिए। इससे से कम में कम एक पति के साथ, जार उत्पाद गुल्क की प्रीत जाएन की सौंग और समाय गया जार्मक गया 5 लाख या उससे कम 5 लाख गरा या 50 लाख गरा। तक मध्या 50 लाख गरा। में अधिक है तो कमाय 1,000/- व्यव अथा। 10,000/- व्यव अथा। 10,000/- व्यव अथा। 10,000/- व्यव अथा। 10,000/- व्यव अथा। विमानित जार ग्रात की प्रतियोगित अपीलीय अधीलीय अध 600

The appeal to the Appellate Tribunal shall be filed in quadruplicate in form EA-3 if 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.10,000/- Rs.10,000

अपीतीय स्पार्थिकाण के शाक्ष अपीत वित्त अपितियम, 1994 की पार्थ 88(1) के अपरीत सेवाका मिन्नवार्थी, 1994 के लियम 9(1) के तहत निप्रितित प्रथा 8.1-5 में शार प्रतियों में की जा मकेशी एर उनके माथ जिस अपीर के लिया अपीत की स्वी हो, उसकी पति साथ में सत्तक करें (अपी में एक पति प्रमाणित होनी पाष्टिए) और इतमें से कम से कम एक पति के साथ, जहां मेंशाका की मिन अपार की मीत और तमाय संग्राज्य मांग्राज्य 5 लाख था उसमें कम, 5 लाख स्था 50 लाख क्षण अरू अथात 50 लाख क्षण अरू अथात 50 लाख क्षण में अपीत है में कमण 1,000, व्याप 5,000, व्याप मांग्राज्य 10,000, व्याप का प्रितित अभा संग्राज्य की पति असार की पति असार की निप्तित क्षण में स्था में स्था में किया में साथ में स्था में सेना प्रतित अपीत मांग्रित अपीत स्था मांग्रित में में साथ मिन सेने द्वार उससार में स्था में सेना प्रतित अस्त स्था में सेना प्रतित अस्त सेना प्रतित अपीतीय स्थापित अपीतीय स्थापित में से साथ निप्ति है। स्थान भारत (स्टे अपीत) के लिए अपीटन पत्र के नाथ 500% स्था कर सितियित मुल्क जना काना होगा । (8)

The appeal under aub section (1) of Section 88 of the Finance Act. 1994, to the Appellate Tribunal Shall be filled 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 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 excreding Rs. Fifty Lakhs, Rs.10.000/- where the amount of service tax & interest demanded & penalty levied is more than fifty Lakhs ruspees 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 shalled. / Application made for grant of stay shall be accompanied by a fee of Rs.500/-

- (1) वितन अधिनियम, 1994 की धारा 86 की उप-धाराओं (2) एवं (2A) के अतनेत इ.सं. की सभी अभीत, नेवाकर नियमधानी, 1994, के लियम 9(2) एवं 9(2A) के तहत निष्पेरित प्रयूप 5.7.7 में की जा सकेती एवं उसके साथ आयुक्त केन्द्रीय उत्पाद शुक्त अथवा आयुक्त (अपीन), केन्द्रीय उत्पाद शुक्क दुवार परित आदेश की पतियाँ सवस्त को (उसमें से एक पति प्रसाणित होती प्राहिए) और आयुक्त दुवार सहायक अग्युक्त अथवा उत्पायक्त, केन्द्रीय उत्पाद शुक्त सेवाक्स, को अपीनीय स्माव्योपकाण को आवेदन दुवं करने का निर्देश देने गत आदेश की शाम में सहस्त करनी होती । / The appeal unider sub-section (2) and (2A) of the section 86 the Finance Act 1994, shall be filed in For ST.7 as prescribed under Rule 9 (2) 5 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 Continussioner or Deputy Commissioner of Central Excisel Service Tax to file the appeal before the Appellate Tribunal
- तीला शुन्क केंग्रीय उत्पाद शुन्क एवं विश्वना अधीतीय प्रतिकाण (नेस्टेंट) के विते अधीतों के आसमें से कंग्रीय उत्पाद शुन्क अधिनिवास 1944 की धारा 15एक के अतर्गत जो की दिलीय अधिनिवास 1994 की धारा 83 के आसीत संचाकर को सी लागू की गई है. इस आदेश के प्रति अधीतीय (10) पाधिकरण में अभीत करते समय अगाद शुनकरतेण कर मान के 10 पतिचार (10%), जब मान एवं जुनीना विवादित है, या जुनीना विवादित है, या जुनीना विवादित है, का मुनतान किया जाए, कार्य कि इस धारा के अनमेत जमा कि जान वाली अविदित देव राणि दस करोड़ कपए में अधिक स हो।

केन्द्रीय उत्पाद शुरू एवं मेशका के अंतर्गत आग किए वर शुरू में जिस्से शक्तित है

- son to fi 4: acobe own
- 90 मेंनवेंट जमा की भी गई गानत शक्ति
- मेजवेट अभा जियमावाती के जियम है के आवर्गत देव रकम (31)

बाती यह कि इस धारा के प्राच्छत जिल्लीय (स. 2) अधितियम 2014 के आरम से पूर्व किसी अधीतीय प्राधिकारी के समक्ष विधारणीत स्थरान अजी एवं अगील को लागू वहीं होगं।/

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 63 of the Finance Act, 1994, an appeal against this order shall be 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 Titx. 'Duty Demanded' shall include

- amount determined under Section 11 Dr.
- 886 amount of enoneous Cenval Credit taken.
- (ai) 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 commercement of the Finance (No.2) Act. 3014.

भारत सरकार को प्रशीक्षण आवेदन : (C)

Revision application to Government of India: इस अटॉड की पुनरीक्षण सारिका जिल्लानियत सामनो से केटीय उत्पद शुल्क लॉसनियस, 1994 की धारा 35EE के प्रथम परगुक के आसीत अवर सचिव भारत सरकार, पुनरीक्षण अवरेटन हेक्सी जिल्ल संसाधक राजक्ष विभाग सीची सजिल जीवन टीप अवन, संस्ट मार्ग, सई दिल्ली-110001 को

A revision application lies to the Under Secretary to the Government of India, Resisson Application Unit, Ministry of Finance, Department of Revenue, 4th Floor, Jeevan Deep fluiding, Parliament Street, New Dehi-110001, under Section 35EE of the CEA 1944 in respect of the following case, governed by first proviso to sub-section (1) of Section-358 (bid.)

- पाँद मान के निजी मुक्तमान के मानते में उन्ना मुक्तमान किसी बाल को किसी कारधान से अंदार गृह के पारनमन के दौरान था किसी अन्य कारधाने था किसी एक बनार गृह से दूसने भारत के प्रसानकारण के दौरान किसी कारधाने या किसी आदार गृह में मान के मुक्तमान के स्थान किसी कारधाने या किसी आदार गृह में मान के मुक्तमान के स्थान किसी कारधाने या किसी आदार गृह में मान के मुक्तमान के स्थान किसी कारधाने या किसी आदार गृह में मान के मुक्तमान के स्थान किसी कारधाने या किसी कारधाने या किसी कारधान के दौरान के स्थान किसी कारधान में किसी कारधान के स्थान किसी कारधान के स्थान किसी कारधान के स्थान किसी कारधान के स्थान के स्थान किसी कारधान के स्थान किसी कारधान के स्थान कारधान के स्थान के स्थ (1)
- भारत के बाहर किसी राष्ट्र या क्षेत्र को जियोज कर रहे माल के विजिओण में प्रयुक्त करनी मान पर भरी गई केस्टीय उत्पाद शुल्क के कुट (पिकेट) के मामलें में, जो भारत के बोहर किसी राष्ट्र या क्षेत्र को जियोज की गयी है। / 003 in case of rebate of duty of excise on goods exported to any country or territory outside tridia of on excisable material used in the manufacture of the goods which are exported to any country or territory outside India
- मदि उत्पाद शुल्क का अगरान किए किस आशत के बाहर, संगान वा भूटान की साल जिसीन किया सात है। / (m)In case of goods exported outside India export to Nepall or Bhutan, without payment of duty.
- मुजिनियन उत्पाद के उत्पादन गुरुक के अमलान के पिए जो तमुटी केबीट इस अधिनियम एवं इसके विभिन्न पानपानी के तहत मान्य की गई है और ऐसे अटिक जो जगकत (अपीन) के दुवारा विन्त ऑपीनवज (त. 2). 1998 की घारा 109 के दुवारा नियन की गई तारीख अथवा समायाविधि पर या बाद से पारित किए गए हैं। (ivi) Crede of any duty allowed to be utilized towards payment of excise duty on final products under the provisions of this Act or the Flutes 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, 1995.
- उपरोचन आवेदन की हो प्रतिया प्राप्त संदर्ज EA-8 में जो की केन्द्रीय उत्पादन गुरूर (अपीन) नियमानती. 2001, के नियम 9 के अतर्गन विनिधिष्ट है. इस आदेश के संदेशन के 3 मार के अनर्गन की जानी चालिए । उपरोचन आवेदन के साथ मुख आदेश व अपीन आदेश की हो बनिया संजयन की जानी चाहिए। आधा ही केन्द्रीय उत्पाद शुल्क अधिनियम, 1944 की था।। 35 EE के तहन निर्धातिन गुल्क की अदस्यों के साथ्य के तौर पर 518-6 की प्रति (V) morae de ande orden o The above application shall be made in deplicate 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 OPC and Onter-in-Appeal. It should also be accompanied by a copy of TR-6 Challan evidencing payment of prescribed less as préscribed under Section 35-EE of CEA. 1944, under Major Head of Account.
- पुनरीक्षण आवेदन के साथ जिल्लाविकित जिप्तीरेत बुत्क की अद्योगकों की जानी पाहिए । जहाँ बेनस्य उक्स एक ताखु रुपये या उन्नलें क्या हो जो रूपये 2007 का भूगतात किया। जांच और नदि सनस्त एक लाख रूपये से उन्नादा हो लो (vi) क्यारे 1000 न का अनुसाम किया जाए । The revision application shall be accompanied by a fee of Rs. 2007 where the amount involved in Rupees One Lac or less and Rs. 10007 where the amount involved is more than Rupees One Lac.
- होरे इस आरोध में कई मूल आरोधों का समारोध है जो पत्योंक मूल आरोध के जिए बुल्क का मूगलान उपरेक्त इस से किया जाना पाहिये। इस तथ्य के होते हुए भी की जिल्हा पाने करीन के लिए प्रधानियोंने अपीलीय न्याणिकरण को एक अधील या केट्रीय सरकार को एक आरोदल किया जाता है।) In case, if the dider covers various numbers of order or Original, tee for each O.I.O. should be paid in the aforesaid manner not webstanding the fact that the one appeal to the Appettant Telbunai or the one application to the Central Govt. As the case may be, is filed to avoid scriptoria work if excusing Ris. I take fee of Ris. 1000- for each. (D)
- वधासभोषित त्यायालय कृतक अधिनियम, 1975, के अनुसूची। के अनुसार सूत्र आदेश एवं उधानत आदेश की प्रति पर जिथारित 6.50 रणये का (E) copy of application or O.LO 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 List terms of the Court Fee Act, 1975, as amended
- सीमा शुरुषा केन्द्रीय उत्पाद शुरुक रण संवाधन अपीतीय त्यापाधिकारण (कार्य विधि) जियमानती, 1982 से वर्णित एवं अन्य संबन्धित सामानी को सन्निर्मित करने वाने जियमां की और भी स्थान सन्वर्णित किया जाता है। / (F) 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.
- ज्ञाय अपोलीच क्रांतिकारी को अपील राजिय करते से संबंधित स्थापक जिस्तुत और संबंधित प्रान्ताओं के लिए, अपीलाकी विभागीय वेबसाइट IGI www.cbec.gov.in at its seat # 1 / 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 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. AAECP4265BSD001. 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.
- 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.



- (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

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:-

on his

(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

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 <u>Swachh Bharat</u> <u>Cess, as service tax</u> 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 subsection (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

247

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)



To,

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

मे. प्रेसिसन ब्रास वर्क्स प्राइवेट लिमिटेड, प्लॉट सं. ३६४५ एवं ३६४६, जी.आई.डी.सी. फेज-III, दरेड, जामनगर-३६९००४.

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.