



::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



सत्यमेव जयते

रजिस्टर्ड डाक ए. डी. द्वारा :-

क	अपील / फाइल संख्या / Appeal / File No.	मूल आदेश सं / O.O. No.	दिनांक / Date
	V2/7/EA2/RAJ/2017	22/ST/REF/2017	24.01.2017

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

**RAJ-EXCUS-000-APP-131 -2017-18**

आदेश का दिनांक / 01.12.2017 जारी करने की तारीख / 04.12.2017  
Date of Order: Date of issue:

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

ग अगर आयुक्त/संयुक्त आयुक्त/उपायुक्त/सहायक आयुक्त, केन्द्रीय उत्पाद शुल्क/सेवाकर, राजकोट / जामनगर / गांधीधाम/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. Legacy Impex P. Ltd., 601, Embassy Tower, Jawahar Road,Opp : Jubilee Baug,Rajkot

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 अंतर्गत एवं वित्त अधिनियम, 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) विशेष 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 बतलाने वाली अपील के अलावा शेष सभी अपीलें सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठ, द्वितीय तल, बहमाली भवन असावा अहमदाबाद-380016 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-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 दर्ज किया जाता चाहिए। इनमें से कम से कम एक प्रति के साथ, जहां उत्पाद शुल्क की मात्रा, व्याज की मात्रा 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/- रुपये, 5,000/- रुपये अथवा 10,000/- रुपये का निर्धारित जमा शुल्क की प्रति संलग्न करें। निर्धारित शुल्क का भुगतान, संबंधित अपीलीय न्यायाधिकरण की शखा के सहायक रजिस्टार के नाम से किसी भी सर्वजनिक क्षेत्र के बैंक द्वारा जारी रेखांकित बैंक ड्राफ्ट द्वारा किया जाना चाहिए। संबंधित ड्राफ्ट का भुगतान, बैंक की उस शखा में होना चाहिए जहां संबंधित अपीलीय न्यायाधिकरण की शखा स्थित है। स्थगन आदेश (स्टे ऑर्डर) के लिए आवेदन-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 अधिनियम, 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 (उनमें से एक प्रति प्रमाणित होनी चाहिए) और इनमें से कम से कम एक प्रति के साथ, जहां सेवाकर की मात्रा, व्याज की मात्रा 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/- रुपये, 5,000/- रुपये अथवा 10,000/- रुपये का निर्धारित जमा शुल्क की प्रति संलग्न करें। निर्धारित शुल्क का भुगतान, संबंधित अपीलीय न्यायाधिकरण की शखा के सहायक रजिस्टार के नाम से किसी भी सर्वजनिक क्षेत्र के बैंक द्वारा जारी रेखांकित बैंक ड्राफ्ट द्वारा किया जाना चाहिए। संबंधित ड्राफ्ट का भुगतान, बैंक की उस शखा में होना चाहिए जहां संबंधित अपीलीय न्यायाधिकरण की शखा स्थित है। स्थगन आदेश (स्टे ऑर्डर) के लिए आवेदन-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 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 the 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 दर्ज की गयी अपील, सेवाकर नियमवली, 1994, के नियम 9(2) एवं 9(2A) के तहत निर्धारित एवं 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 (अर्थात् से एक प्रति प्रस्तुतित होनी चाहिए) और आयुक्त द्वारा सहायक आयुक्त अथवा उपायुक्त, केन्द्रीय उत्पाद शुल्क सेवाकर, को अपीलीय न्यायाधिकरण को आवेदन दर्ज 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 (सेटलट) के प्रति अपील के मामले में केन्द्रीय उत्पाद शुल्क अधिनियम 1944 की धारा 35एफ के अंतर्गत, जो की वित्तीय अधिनियम, 1994 की धारा 83 के अंतर्गत सेवाकर को भी लागू की गई है, इस आदेश के प्रति अपीलीय प्राधिकरण में अपील करने समय उत्पाद शुल्क/सेवा कर मांग के 10 प्रतिशत (10%), जब मांग एवं जुर्माना विवादित है, या जुर्माना, जब केवल जुर्माना 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 'मांग किए गए शुल्क' में निम्न शामिल है:  
(i) धारा 11 डी के अंतर्गत रकम  
(ii) सेनवेट जमा की सी गई गलत राशि  
(iii) सेनवेट जमा नियमवली के नियम 6 के अंतर्गत देय रकम  
- बशर्त यह कि इस धारा के प्राधान्य वित्तीय (सं. 2) अधिनियम 2014 के आदेश से पूर्व किसी अपीलीय प्राधिकारी के द्वारा विचारणीय स्थगन अर्जी एवं अपील को लागू नहीं होनी।  
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 आवेदन की पुनरीक्षण याचिका निम्नलिखित मामलों में, केन्द्रीय उत्पाद शुल्क अधिनियम, 1994 की धारा 35EE के प्रथम पारुक्त के अंतर्गत अथवा सचिव, भारत सरकार, पुनरीक्षण आवेदन इकाई, वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, संसद भवन, 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 माल के किसी नुकसान के मामले में, जहां नुकसान किसी माल 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 माल के प्रसंस्करण के दौरान, किसी कारखाने या किसी भंडार गृह में माल के कुंसाज 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 an 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) सुनिश्चित उत्पाद के उत्पादन शुल्क के भुगतान के लिए जो इमुटी क्रेडिट इस अधिनियम एवं इसके विभिन्न प्रावधानों के तहत मान्य की गई है और ऐसे आदेश जो आयुक्त (अपील) के द्वारा वित्त अधिनियम (सं. 2), 1998 की धारा 109 के द्वारा निर्यात की गई लघु अथवा समायाचिका पर या बाद 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 प्रथम संख्या EA-8 में, जो की केन्द्रीय उत्पाद शुल्क (अपील) नियमवली, 2001, के नियम 9 के अंतर्गत विनिर्दिष्ट है, इस आवेदन के संवेक्षण 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 अदायगी के साक्ष्य 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 O.I.O 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 अदायगी 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 ढंग से किया जाना चाहिए। इस लघु के होते हुए भी की निम्न पढी कार्य से बचने के लिए क्याचिका 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 Appellate 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) पचासशतित न्यायालय शुल्क अधिनियम, 1975, के अनुसूची-1 के अनुसार मूल आदेश एवं स्थगन 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 (सर्व विधि) नियमवली, 1982 में वर्णित 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 दाखिल करने से संबंधित व्यापक, विस्तृत और नवीनतम प्रावधानों 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 Principal Commissioner, Central Excise & Service Tax, Rajkot (hereinafter referred to as 'the appellant-department') has filed the present appeal against the Order-In-Original No.22/ST/REF/2017 dated 24.1.2017 (hereinafter referred to as "the impugned order") passed by the Deputy Commissioner, Service Tax Division, Rajkot (hereinafter referred to as "the sanctioning authority") in the case of M/s. Legacy Impex Pvt. Ltd., 601, Embassy Tower, Jawahar Road, Opp. Jubilee Baug, Rajkot-360 001 (hereinafter referred to as 'the respondent').

2. The facts of the case are that the respondent filed refund claim of Rs. 2,19,381/- 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 month of Dec-2016. Show Cause Notice No. V/18-188/ST/Ref/16-17 dated 27.12.2016 was issued to the respondent proposing rejection of rebate claim for various reasons enumerated in the SCN. The sanctioning authority vide impugned order rejected the rebate claim for Rs. 67,392/- on account of time bar and rest of rebate claim of Rs. 1,51,989/- was sanctioned.

3. Being aggrieved with the impugned order, the appellant-department preferred the present appeal on 12.5.2017, *inter-alia*, on the following grounds:

(i) The sanctioning authority has made error while sanctioning the refund of Swachh Bharat Cess (hereinafter referred to as "SBC") so far as it pertains to the refund under provisions of Notification No. 41/2012-ST dated 29.6.2012. The sanctioning authority has wrongly held that Chapter VI of the Budget 2015 enabling provisions incorporated for levy of SBC and accordingly refund of SBC is available to export made and refund claimed under Notification No. 41/2012-ST.

(ii) So far as it relates to SBC, approach of Government for levy of SBC is very clear and specific. The department relied on FAQ dated 14.11.2015 (Question No. 14) which clarified that SBC shall not be available as cenvat credit and liability of same cannot be discharged by utilizing cenvat credit.

(iii) Notification No. 39/2012-ST dated 20.12.2012 has been amended by Notification No. 3/2016-ST dated 03.02.2016 so as to provide for rebate of SBC paid on services used in providing services which are exported under Rule 6A of the Service Tax Rules, 1994. Further, Notification No. 12/2013-ST dated 01.07.2013 is also amended vide Notification No. 2/2016-ST dated 03.02.2016 so as to allow refund of SBC paid on specified services used in SEZ, whereas no such amendment has been made by the Government so far as it relates to refund under Notification No. 41/2012-ST dated 29.06.2012 and the said Notification does not see such specific mention of refund of SBC.

*Handwritten signature*



(iv) The sanctioning authority has not interpreted that where the Board has expressly clarified that SBC is not eligible for cenvat credit and what is not allowed under Cenvat Credit route is generally not allowed under refund or exemption.

4. The copy of appeal memorandum filed by the appellant department was forwarded to the respondent and Memorandum of Cross Objections was filed by them, inter-alia, on the following grounds: -

(i) Due to resignation of the dealing Assistant, letter dated 09.06.2017 was not brought to the notice of Directors of the Respondent and it could be traced only after new official joined. The respondent requested to condone the delay in filing of this cross-objection and also submitted that this may be treated as a written submission and kindly be taken on record.

(ii) The department's contention that cenvat credit of SBC is not allowed and that what is not allowed under Cenvat credit route is generally not allowed under refund or exemption. This perception appears to be not tenable as cenvat credit scheme and Refund/Rebate or granting exemption is independent of each other and not co-related. Both are granted for certain specific purpose purely as a matter of policy. This perception gets vacated as the first instance as there is no confusion regarding the fact that rebate of SBC is being allowed under Notification No. 39/2012-ST dated 20.06.2012 as amended by Notification No. 3/2016-ST dated 03.02.2016 and exemption by way of refund of service tax paid on the specified services by Notification No. 12/2013-ST dated 01.07.2013 as amended by Notification No. 2/2016-ST dated 03.02.2016.

(iii) Notification No. 39/2012-ST dated 20.06.2012 as amended by Notification No. 3/2016-ST dated 03.02.2016 and Notification No. 12/2013-ST dated 01.07.2013 as amended by Notification No. 2/2016-ST dated 03.02.2016 display the very intention of granting rebate of SBC. The explanation to Notification No. 39/2012-ST provides that 'Service Tax and Cess' means service tax leviable under Section or Section 66B of the Act and Education Cess on taxable services levied under Section 91 read with Section 95 of the Finance Act, 2004 and Secondary and Higher Education Cess on taxable services levied under Section 136 read with Section 140 of the Finance Act, 2007. Notification No. 12/2013-ST grants exemption to the services on which service tax is leviable under Section 66B of the Act. A confusion was created regarding granting rebate of SBC and KKC as both these cess were collected as 'Service Tax' by virtue of Finance Act 2015 and Finance Act, 2016 respectively. The amendments were done in Notification No. 39/2012-ST dated 20.06.2012 and Notification No. 12/2013-ST dated 01.07.2013 so as to grant rebate of amount of SBC and KKC which shows the intention of the Government to allow rebate of entire service tax as taxes are not to be exported. There was no qualification that service tax leviable under Section 66 or Section

*Ames*

66B are to be refunded in Notification No. 41/2012-ST dated 29.06.2012, which obviously included Service Tax paid under Section 66 or Section 66B of the Finance Act, 1994 as well as levied and collected under Section 2 of Finance Act, 2015 and Finance Act, 2016. As there was no confusion or unintended exclusion no such amendment was made in Notification No. 41/2012-ST dated 20.06.2012.

(iv) The appellant referred Section 5 of the Finance Act, 2015 and Section 5 of the Finance Act, 2016 and submitted that the provisions of refunds shall also apply as they apply in relation to levy and collection of tax on taxable services under Chapter V of the Finance Act, 1994 and accordingly there may not be any different approach while applying the above provisions for levy and collection and while granting refunds, which included rebate.

5. Personal hearing in the matter was attended to by Shri Punit Karia, Chartered Accountant, who submitted that refund of SBC & KKC is allowed under Notification No. 41/2012-ST if goods are exported; that cenvat credit has no relation with refund of SBC and since the goods are exported, refund of SBC is allowed. Shri Janak Raj Sharma, Superintendent, GST & Central Excise Division-I, Rajkot also attended personal hearing on behalf of the department and reiterated Grounds of Appeal.

(ii) Due to resignation of the dealing Assistant, letter dated 09.06.2017 was not brought to the notice of Directors of the Respondent and it could be traced only after new official joined. The respondent requested to condone the delay in filing of this cross-objection and also submitted that this may be treated as a written submission and kindly be taken on record.

(ii) The department's contention that cenvat credit of SBC is not allowed and that what is not allowed under Cenvat credit route is generally not allowed under refund or exemption. This perception appears to be not tenable as cenvat credit scheme and Refund/Rebate or granting exemption is independent of each other and not co-related. Both are granted for certain specific purpose purely as a matter of policy. This perception gets vacated as the first instance as there is no confusion regarding the fact that rebate of SBC is being allowed under Notification No. 39/2012-ST dated 20.06.2012 as amended by Notification No. 3/2016-ST dated 03.02.2016 and exemption by way of refund of service tax paid on the specified services by Notification No. 12/2013-ST dated 01.07.2013 as amended by Notification No. 2/2016-ST dated 03.02.2016.

(iii) Notification No. 39/2012-ST dated 20.06.2012 as amended by Notification No. 3/2016-ST dated 03.02.2016 and Notification No. 12/2013-ST dated 01.07.2013 as amended by Notification No. 2/2016-ST dated 03.02.2016 display the very intention of granting rebate of SBC. The explanation to Notification No.

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39/2012-ST provides that 'Service Tax and Cess' means service tax leviable under Section or Section 66B of the Act and Education Cess on taxable services levied under Section 91 read with Section 95 of the Finance Act, 2004 and Secondary and Higher Education Cess on taxable services levied under Section 136 read with Section 140 of the Finance Act, 2007. Notification No. 12/2013-ST grants exemption to the services on which service tax is leviable under Section 66B of the Act. A confusion was created regarding granting rebate of SBC and KKC as both these cess were collected as 'Service Tax' by virtue of Finance Act 2015 and Finance Act, 2016 respectively. The amendments were done in Notification No. 39/2012-ST dated 20.06.2012 and Notification No. 12/2013-ST dated 01.07.2013 so as to grant rebate of amount of SBC and KKC which shows the intention of the Government to allow rebate of entire service tax as taxes are not to be exported. There was no qualification that service tax leviable under Section 66 or Section 66B are to be refunded in Notification No. 41/2012-ST dated 29.06.2012, which obviously included Service Tax paid under Section 66 or Section 66B of the Finance Act, 1994 as well as levied and collected under Section 2 of Finance Act, 2015 and Finance Act, 2016. As there was no confusion or unintended exclusion no such amendment was made in Notification No. 41/2012-ST dated 20.06.2012.

(iv) The appellant referred Section 5 of the Finance Act, 2015 and Section 5 of the Finance Act, 2016 and submitted that the provisions of refunds shall also apply as they apply in relation to levy and collection of tax on taxable services under Chapter V of the Finance Act, 1994 and accordingly there may not be any different approach while applying the above provisions for levy and collection and while granting refunds, which included rebate.

#### **FINDINGS:**

6. I have carefully gone through the facts of the case, impugned order, appeal memorandum, Memorandum of Cross Objections and submissions made at the time of personal hearing. The issue to be decided in the present case is as to whether the respondent is entitled for rebate of SBC paid on the services used for export of goods under Notification No. 41/2012-ST dated 29.06.2012 or not.

6.1 Notification No. 41/2012-ST dated 29.06.2012 allows refund of Service Tax and opening Paragraph is 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)*

6.2 The department has contended that the sanctioning authority has wrongly held that Chapter VI of the Budget 2015 enabling provisions incorporated levy of SBC and refund of SBC is available to the export made if claimed under Notification No. 41/2012-ST. I would like to take a look at Chapter VI inserted vide Section 119 of the Finance Act, 2015, which are 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.*

*[Handwritten signature]*

(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)*



6.3 I find that Section 119 of the Finance Act, 2015 levied SBC on taxable services and Section 119(2) specifies SBC as Service Tax and Section 119(5) specifies that the provisions of refund of Service Tax under Finance Act, 1994 (hereinafter referred to as "the Act") shall apply to refund of SBC.

6.4 Section 119(1) of the Finance Act, 2015 stipulates 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.

6.5 It is abundantly clear that SBC has been levied as service tax only as per 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.

6.6 It is settled position that the Government of India has consistently adopted policy not to export taxes. If the contention of the department is accepted then refund of SBC, even if imposed as Service Tax vide Section 119(2) of the 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.

7. 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 the Notification *ibid*. Therefore, I do not find any infirmity in the findings of the sanctioning authority that Chapter VI of the Budget 2015 enabling provisions incorporated for levy of SBC and accordingly refund of SBC is available under Notification No. 41/2012-ST.

7.1 The department has contended non-availability of refund of SBC under Notification No. 41/2012-ST on the ground that SBC is not available as cenvat credit and also on the ground that liability of SBC cannot be discharged by utilizing cenvat credit and what is not allowed under Cenvat Credit route is generally not allowed under refund or exemption. I find this logic is not correct at all, for the reason that general understanding can't be a ground to deny refund, if refund is



admissible and also for the reason that the provisions governing admissibility of cenvat credit are altogether different from the provisions governing refund/rebate. I find that the conditions and limitations governing rebate claim have nothing to do with the conditions and limitations governing cenvat credit until and unless specified. I find that the arguments of the department are without merit and also without support of provisions made under the law and hence cannot be allowed to sustain.

7.2 The department has also contended 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 so as to allow refund of SBC and 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 so as to allow refund of SBC, whereas 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)*

7.2.1 Hence, there was need to add SBC in clause (d) vide Notification No. 3/2016-ST dated 03.02.2016 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.

7.3 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 has been levied under Section 119 of the Finance Act, 2015, hence there was legal requirement to amend Notification No. 12/2013-ST vide Notification No. 2/2016-ST 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

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specifying leviable under Section 66 or Section 66B of the Finance Act, 1994. Hence, no amendment in Notification No. 41/2012-ST was or is legally required to be undertaken.

7.4. Therefore, I find that the contentions made by the department are neither correct nor legal and proper.

8. In view of above factual and legal position, I find no merit in the appeal filed by the department and hence reject the appeal.

८.१. डिपार्टमेंट द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।

8.1. The appeal filed by the department stands disposed off in above terms.

*(कुमार संतोष)*  
11/12/2017  
आयुक्त (अपील्स)

**By Speed Post**

To,

(i) The Commissioner, GST & Central Excise Commissionerate, Rajkot	(i) आयुक्त, केन्द्रीय वस्तु एवं सेवा कर आयुक्तालय, राजकोट
(ii) M/s. Legacy Impex Pvt. Ltd., 601, Embassy Tower, Jawahar Road, Opp. Jubilee Baug, Rajkot-360 001	(ii) मे. लेगसी इंपेक्ष प्रा. लि., ६०१, एम्बेससी टावर, जवाहर रोड, जुबिली बाग के सामने, राजकोट - ३६०००१.

**Copy to:**

- 1) The Chief Commissioner, GST & Central Excise, Ahmedabad Zone, Ahmedabad.
- 2) The Assistant Commissioner, GST & Central Excise Division – I, Rajkot
- 3) Guard File.