



::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 / 2nd Floor, GST Bhavan
रेस कोर्स रिंग रोड / Race Course Ring Road
राजकोट / Rajkot - 360 001

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रजिस्टर्ड डाक ए.डी.द्वारा :-

क	अपील / फाइलसंख्या/ Appeal /File No. V2/187/BVR/2018-19	मूल आदेश सं / O.I.O. No. R-52/Refund/18-19	दिनांक/ Date: 12/10/2018
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ख अपीलआदेशसंख्या(Order-In-Appeal No.):

BHV-EXCUS-000-APP-238-2019

आदेश का दिनांक/ Date of Order:	22.10.2019	जारी करने की तारीख / Date of issue:	22.10.2019
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श्री गोपी नाथ, आयुक्त (अपील्स), राजकोट द्वारा पारित /
Passed by Shri Gopi Nath, Commissioner (Appeals), Rajkot

ग अपर आयुक्त/ संयुक्त आयुक्त/ उपायुक्त/ सहायक आयुक्त, केन्द्रीय उत्पाद शुल्क/ सेवाकर/ वस्तु एवं सेवाकर, राजकोट / जामनगर / गांधीधाम द्वारा उपरलिखित जारी मूल आदेश से सृजित: /
Arising out of above mentioned OIO issued by Additional/Joint/Deputy/Assistant Commissioner, Central Excise/ST / GST, Rajkot/Jamnagar/Gandhidham :

घ **अपीलकर्ता & प्रतिवादी का नाम एवं पता / Name & Address of the Appellants & Respondent :-**
M/s. Madhu Silica Pvt. Ltd., DU-IV, situated at Plot No.147, Vartej, Bhavnagar-364060,

इस आदेश (अपील) से व्यथित कोई व्यक्ति निम्नलिखित तरीके में 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) वर्गीकरण मूल्यांकन से सम्बन्धित सभी मामले सीमा शुल्क, केन्द्रीय उत्पादन 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 बताए गए अपीलों के अलावा शेष सभी अपीलों सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, द्वितीय तल, बहुमाली भवन असावा अहमदाबाद- 380016 को की जानी चाहिए। /

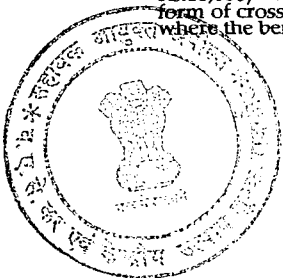
To the West regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at, 2nd Floor, Bhaumali Bhawan, Asarwa Ahmedabad-380016 in case of appeals other than as mentioned in para- 1(a) above

(iii) अपीलीय न्यायाधिकरण के समक्ष अपील प्रस्तुत करने के लिए केन्द्रीय उत्पाद शुल्क (अपील) नियमावली, 2001, के नियम 6 के अंतर्गत निर्धारित किए गये प्रपत्र EA-3 को चार प्रतियों में दर्ज किया जाना चाहिए। इनमें से कम से कम एक प्रति के साथ, जहां उत्पाद शुल्क की मांग, ब्याज की मांग 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 शाखा के सहायक रजिस्टार के नाम से किसी भी सार्वजनिक क्षेत्र के बैंक द्वारा जारी रेखांकित 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/- 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 नियमवाली, 1994, के नियम 9(1) के तहत निर्धारित प्रपत्र S.T.-5 में चार प्रतियों में की जा सकेगी 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 मांग, ब्याज की मांग 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 शाखा के सहायक रजिस्टार के नाम से किसी भी सार्वजनिक क्षेत्र के बैंक द्वारा जारी रेखांकित 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/- 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 is 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/-.



- (i) वित्त अधिनियम, 1994 की धारा 86 की उप-धाराओं (2) एवं (2A) के अंतर्गत दर्ज की गयी अपील, सेवाकर नियमावली, 1994, के नियम 9(2) एवं 9(2A) के तहत निर्धारित प्रपत्र S.T.-7 में की जा सकेगी एवं उसके साथ आयुक्त, केन्द्रीय उत्पाद शुल्क अथवा आयुक्त (अपील), केन्द्रीय उत्पाद शुल्क द्वारा पारित आदेश की प्रतियाँ संलग्न करें (उनमें से एक प्रति प्रमाणित 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 संलग्न करनी होगी। /
The appeal under 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) & 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 (सेस्टेट) के प्रति अपीलों 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 करते 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, बशर्ते 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 ली गई गलत राशि
(iii) सेनवेट जमा नियमावली के नियम 6 के अंतर्गत देय रकम
- बशर्ते यह कि इस धारा के प्रावधान वित्तीय (सं. 2) अधिनियम 2014 के आरंभ से पूर्व किसी अपीलीय प्राधिकारी के समक्ष विचाराधीन स्थगन अर्ज़ी एवं अपील को लागू नहीं होगा।
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 कोपुनरीक्षण आवेदन :**
Revision application to Government of India:
इस आदेश की पुनरीक्षणयाचिका निम्नलिखित मामलों में, केन्द्रीय उत्पाद शुल्क अधिनियम, 1994 की धारा 35EE के प्रथमपरंतुक के अंतर्गत अवर सचिव, भारत सरकार, पुनरीक्षण आवेदन इकाई, वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, 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 case, governed by first proviso to sub-section (1) of Section-35B ibid:
- (i) यदि माल के किसी नुकसान के मामले में, जहाँ नुकसान किसी माल को किसी कारखाने से भंडार गृह के पारगमन के दौरान या किसी अन्य कारखाने या फिर किसी एक भंडार गृह से दूसरे भंडार गृह पारगमन के दौरान, या किसी भंडार गृह में या भंडारण में माल के प्रसंस्करण 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 छुट (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) सुनिश्चित उत्पाद के उत्पादन शुल्क के भुगतान के लिए जो ड्यूटी क्रेडिट इस अधिनियम एवं इसके विभिन्न प्रावधानों के तहत मान्य की गई है और ऐसे आदेश जो आयुक्त (अपील) के द्वारा वित्त अधिनियम (न. 2), 1998 की धारा 109 के द्वारा नियत की गई तारीख अथवा समयावधि 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 प्रतियाँ प्रपत्र संख्या EA-8 में, जो की केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001, के नियम 9 के अंतर्गत विनिर्दिष्ट है, इस आदेश के संप्रेषण के 3 माह के अंतर्गत की जानी चाहिए। उपरोक्त आवेदन के साथ मूल आदेश व अपील आदेश की दो प्रतियाँ संलग्न की जानी चाहिए। साथ ही केन्द्रीय उत्पाद शुल्क अधिनियम, 1944 की धारा 35-EE के तहत निर्धारित शुल्क की 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 OIO and Order-In-Appeal. It should also be accompanied by a copy of TR-6 Challan evidencing payment of prescribed fee as prescribed under Section 35-EE of CEA, 1944, under Major Head of Account.
- (vi) पुनरीक्षण आवेदन के साथ निम्नलिखित निर्धारित शुल्क की 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, उपर्युक्त ढंग से किया जाना चाहिये। इस तथ्य के होते हुए भी की लिखा पढ़ी कार्य से बचने के लिए यथास्थिति अपीलीय न्यायाधिकरण को एक अपील या केन्द्रीय सरकार को एक आवेदन किया जाता है। / In case, if the order covers various numbers of order- in Original, fee for each O.I.O. should be paid in the aforesaid manner, not withstanding the fact that the one appeal to the Appellant Tribunal or the one application to the Central Govt. As the case may be, is filled to avoid scriptoria work if excising Rs. 1 lakh fee of Rs. 100/- for each.
- (E) यथासंशोधित न्यायालय शुल्क अधिनियम, 1975, के अनुसूची-I 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-I in terms of the Court Fee Act, 1975, as amended.
- (F) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्य विधि) नियमावली, 1982 में वर्णित एवं अन्य संबन्धित मामलों को सम्मिलित करने वाले नियमों की ओर 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, अपीलार्थी विभागीय 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 ::

M/s Madhu Silica Pvt Ltd (DU-IV), Bhavnagar (*hereinafter referred to as "Appellant"*) filed Appeal No. 187/BVR/2018-19 against Order-in-Original No. R-52/Refund/2018-19 dated 12.10.2018 (*hereinafter referred to as 'impugned order'*) passed by the Asst. Commissioner, Central GST & Central Excise, Bhavnagar-1 Division, Bhavnagar Commissionerate (*hereinafter referred to as 'refund sanctioning authority'*).

2. The brief facts of the case are that the Appellant filed a refund claim of Rs. 1,63,300/- for unused Krishi Kalyan Cess (*hereinafter referred to as 'KKC'*). The Appellant used to avail Cenvat credit of KKC under the provisions of Cenvat Credit Rules, 2004 (*hereinafter referred to as 'CCR, 2004'*) and utilized the same as per the provisions of the Rule 4 of CCR, 2004 i.e. the KKC was used for payment of KKC payable as service provider on the services of testing and analysis of chemical samples up to 30.06.2017. The Appellant received some invoices on which service tax was paid along with KKC, even after filing of TRAN-1. Since, the Appellant had already filed TRAN-1, therefore, KKC so paid could not be availed or carry forwarded, they filed refund claim under the provisions of Section 11B of the Central Excise Act, 1944.

2.1. It appeared to the refund sanctioning authority that there is no provision under Section 11B of the Central Excise Act to grant refund of KKC paid. Accordingly, a Show Cause Notice dated 10.08.2018 was issued to the Appellant calling them to show cause as to why their refund claim should not be rejected.

3. The refund sanctioning authority rejected the refund claim vide the impugned order.

4. Aggrieved, the Appellant preferred appeal, *inter-alia*, on the following grounds:-

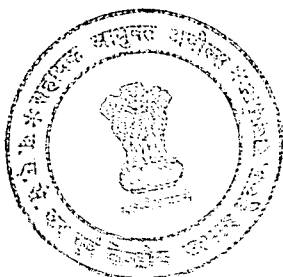
(i) The findings of lower adjudicating authority at para 9.5 of the impugned order that as per explanation 1 & 2 in Section 140 (Transitional arrangement for input tax credit) of the CGST Act, 2017 KKC is not an eligible duty under Trans-1 credit, are not sustainable in law on the ground that as per Rule-3(1a) of the Cenvat Credit Rules, 2004 the provider of output service shall be allowed to take credit of KKC; that the Appellant is provider of output taxable service, hence, KKC is admissible as credit; that though KKC is not specified as eligible duties and taxes under said explanation, but, as per clause-158 of the Finance Bill,

2016 KKC is levied and collected as service tax; that as per sr. no. VIII of explanation 2 of Section 140 of the CGST Act, 2017, "service tax leviable under section 66B of the Act" is covered as eligible duties and taxes for Trans-1 credit; that KKC is nothing but service tax and same is admissible as credit under Trans-1; that Appellant is of the view that KKC paid on services received prior to 30.06.2017 and not claim under TRANS-01 is available as refund under provisions of Section-11B of the Central Excise Act, 1944.

(ii) The refund claim was rejected on the ground that under Section 11B of the Central Excise Act, 1944 is no provision to grant refund of KKC paid, which appears to be bad in law as KKC is levied and collected as service tax; that credit of KKC is allowed under Rule 3(12) of the CCR; that the provisions of Section 11B of the Central Excise Act, 1944 are applicable to refund of KKC as the same is levied and collected as service tax. Therefore, to this extent department has misinterpreted the provision; that the impugned order is not sustainable in law the same is required to be set aside.

5. In hearing, Shri R.R. Dave, Consultant appeared on behalf of the Appellant and reiterated the grounds of Appeal and submitted additional submission dated 3.9.2019 wherein it has been pleaded that as per Section 161(2) of Finance Act, 2016, KKC is nothing but service tax and provisions of chapter V of the Finance Act, 1994, and rules made there under including those including those relating to refund & exemptions from tax, interest & imposition of penalty shall, as far as may be, apply in relation to the levy & collection of KKC; that in view of above one can conclude that under transitional arrangement for input tax credit under new GST tax regime (Section 140) and explanation regarding to eligible duties & taxes, the heading of KKC not separately specified or indicated; that Appellant is of the view that even otherwise, if refund is not allowed then, it is natural that the elements of KKC would become part of expenditure & shall be included in cost of a product and GST would be levied at that cost at the time of supply, which would tantamount as tax on tax; that the lower adjudicating authority has not considered the government policy on indirect taxes as well as not examined the provisions of Section 161 of the Finance Act, 2016.

6. I have carefully gone through the facts of the case, the impugned order, and written submissions made by the Appellant. The issue to be decided in the present appeal is whether the impugned order rejecting refund claim of Rs. 1,63,300/- is correct, legal and proper or not.



[Handwritten signature]

7. I find that the Appellant had filed refund claim of Rs. 1,63,300/- in respect of credit of Krishi Kalyan Cess received by them after implementation of GST i.e. after 1.7.2017. The refund sanctioning authority rejected the refund claim, *inter alia*, on the ground that there was no provision in CGST Act, 2017 to refund KKC availed under erstwhile Cenvat Credit Rules, 2004 and also on the ground that there is no provision to grant refund of KKC under Section 11B of the Central Excise Act, 1944. The Appellant mainly contested on the ground that they were eligible to avail Cenvat credit of KKC paid on services received by them but after 1.7.2017, there is no transitional provision to transfer KKC in GST regime and hence, they have no other option but to file refund claim.

8. I find that the Appellant was availing Cenvat credit of Krishi Kalyan Cess in terms of Rule 3(1a) of CCR, 2004 and utilizing the same for payment of KKC on their outward service upto 30.6.2017. There is no dispute about availment of KKC or its utilization by the Appellant. However, so far as refund of unutilized balance of KKC is concerned, I find that there is no provision either in CGST Act, 2017 or Central Excise Act, 1944 or rules made thereunder for refund of such KKC. Further, refund of KKC is also not governed under Section 11B of the Central Excise Act, 1944 as rightly held by the refund sanctioning authority.

9. Regarding contention of the Appellant that as per Sl. No. (viii) of Explanation-2 of Section 140 of the CGST Act, 2017, "service tax leviable under section 66B of the Act" is covered as eligible duties and taxes for Trans-1 credit, I find that the Authority for Advance Ruling in the case of CMI FPE Ltd reported as 2018 (16) G.S.T.L. 311 (A.A.R. - GST), *inter alia*, held that KKC cannot be treated as Service Tax and hence, Cenvat credit referred in Section 140(1) of CGST Act, 2017 would not include credit of KKC. The relevant portion of the said Order is reproduced as under:

"From the submissions made by the applicant it is seen that in addition to the EC and SHEC their query is also whether they are eligible to avail ITC against unutilized Cenvat credit of Krishi Kalyan Cess (KKC) lying in their books of accounts. This authority has answered this question in the negative in the Advance Ruling order passed in the case of *M/s. Kansai Nerolac Paints Limited (KNPL)* [2018 (12) G.S.T.L. 526 (A.A.R. - GST)]. In the case of *KNPL*, the query was similar i.e. whether accumulated credit by way of KKC would be considered as ITC under GST laws. The reasons on the basis of which the said ruling has been passed would also be applicable to the subject matter at hand.

We find that express provisions have been made in the Cenvat Credit Rules from time to time that credit availed in respect of EC, SHEC and KKC can be used for making tax/duty payments only against EC, SHEC and KKC, respectively. The CCR has also expressly provided that items in respect of which Cenvat credit is available, would not be utilized for payment of EC, SHEC and KKC. Thus, there was a clear demarcation of the credit in respect of

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EC, SHEC and KKC. Under GST, there is no levy of the three types of cesses mentioned above.

We find that the provisions of Section 140(1) of the GST ACT, 2017 clearly states that "a registered person shall be entitled to take, in his electronic credit ledger, the amount of Cenvat credit carried forward.....". It is further mentioned that entries in respect of KKC, EC etc. are not found in the existing Section 140 of the CGST Act and also under the rules made therein. In the present case, EC, SHEC and KKC were to be utilized for payment of EC, SHEC and KKC respectively. Therefore, all the three types of cesses cannot be treated as excise duty or service tax. In view thereof, the Cenvat credit as referred to in sub-section (1) of Section 140 would not include the credit in respect of KKC. Therefore, the credit of taxes which are not covered in the definition of eligible duties in Section 140 cannot be availed."

10. In view of above, I hold that the Appellant is not eligible for refund of unutilized balance of KKC and hence, their refund claim was correctly rejected by the refund sanctioning authority.

11. I, therefore, uphold the impugned order and reject the appeal.

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

12. The appeal filed by the Appellant is disposed off as above.

सत्यापित,

✓

विपुल शाह
अधीक्षक (अपील)

(Gopi Nath) 22/11/19
Commissioner(Appeals)

By R.P.A.D.

To, M/s Madhu Silica Pvt Ltd (DU-IV), Plot No. 147, GIDC Vartej, Bhavnagar.	सेवा में, मेसर्स मधु सिलिका प्राइवेट लिमिटेड प्लॉट नं. 147, जीआईडीसी वरतेज, भावनगर।
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प्रतिलिपि :-

- 1) प्रधान मुख्य आयुक्त, वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, गुजरात क्षेत्र, अहमदाबाद को जानकारी हेतु।
- 2) आयुक्त, वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, भावनगर आयुक्तालय, भावनगर को आवश्यक कार्यवाही हेतु।
- 3) सहायक आयुक्त, वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, भावनगर-1 मण्डल, भावनगर आयुक्तालय, भावनगर को आवश्यक कार्यवाही हेतु।
- 4) गार्ड फ़ाइल।

