



::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

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.I.O. No.	दिनांक / Date
	V2/162/GDM/2017	ST/166/2017-18	22-05-2017

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

KCH-EXCUS-000-APP-064-2018-19

आदेश का दिनांक / Date of Order:	02.07.2018	जारी करने की तारीख / Date of issue:	04.07.2018
------------------------------------	-------------------	--	-------------------

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

ग अपर आयुक्त/ संयुक्त आयुक्त/ उपायुक्त/ सहायक आयुक्त, केन्द्रीय उत्पाद शुल्क/ 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 / Service Tax, Rajkot / Jamnagar / Gandhidham :

घ **अपीलकर्ता & प्रतिवादी का नाम एवं पता /Name & Address of the Appellant & Respondent :-**
M/s. Adani Wilmar Ltd., Village : Dhruh,,Mundra - Kutch 370 421,

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.

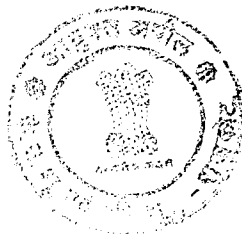
(ii) उपरोक्त परिच्छेद 1(a) में बताए गए अपीलों के अलावा शेष सभी अपीलों सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, , द्वितीय तल, बहुमाली भवन असारवा अहमदाबाद- 380016 को की जानी चाहिए। /
To the West regional bench of Customs, Excise & Service Tax 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) नियमवाली, 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 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/-.



- (i) वित्त अधिनियम, 1994 की धारा 86 की उप-धाराओं (2) एवं (2A) के अंतर्गत दर्ज की गयी अपील, सेवाकर नियमवाली, 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 का 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 36 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 रुपये 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 होंगे। /

For an appeal to be filed before the CESTAT, under Section 35F of the Central Excise Act, 1944 which is also made applicable to Service Tax under Section 83 of the Finance Act, 1994, an appeal against this order shall lie before the Tribunal on payment of 10% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute, provided the amount of pre-deposit payable would be subject to a ceiling of Rs. 10 Crores,

Under Central Excise and Service Tax, "Duty Demanded" shall include :

- (i) amount determined under Section 11 D;
(ii) amount of erroneous Cenvat Credit taken;
(iii) amount payable under Rule 6 of the Cenvat Credit Rules

- provided further that the provisions of this Section shall not apply to the stay application and appeals pending before any appellate authority prior to the commencement of the Finance (No.2) Act, 2014.

(C) भारत सरकार को पुनरीक्षण आवेदन :

Revision application to Government of India:

इस आदेश की पुनरीक्षण याचिका निम्नलिखित मामलों में, केन्द्रीय उत्पाद शुल्क अधिनियम, 1994 की धारा 35EE के प्रथम परंतुक 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, जहां 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 छूट (रिबेट) के मामले में, जो भारत के बाहर किसी राष्ट्र या क्षेत्र को निर्यात की गयी है। / In case of rebate of duty of excise on goods exported to any country or territory outside India of on excisable material used in the manufacture of the goods which are exported to any country or territory outside India.
- (iii) यदि उत्पाद शुल्क का भुगतान किए बिना भारत के बाहर, नेपाल या भूटान को माल निर्यात किया गया है। / In case of goods exported outside India export to Nepal or Bhutan, without payment of duty.
- (iv) सुनिश्चित उत्पाद के उत्पादन शुल्क के भुगतान के लिए जो इगुटी क्रेडिट इस अधिनियम एवं इसके विभिन्न प्रावधानों के तहत मान्य की गई है और ऐसे आदेश जो आयुक्त (अपील) के द्वारा वित्त अधिनियम (नं. 2), 1998 की धारा 109 के द्वारा नियत की गई तारीख अथवा समायाविधि 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 प्रपत्र संख्या EA-8 में, जो की केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001, के नियम 9 के अंतर्गत विनिर्दिष्ट है, इस आदेश के संश्लेषण 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 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 पट्टी 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, notwithstanding the fact that the one appeal to the Appellant Tribunal or the one application to the Central Govt. As the case may be, is filled to avoid scriptoria work if excising Rs. 1 lakh fee of Rs. 100/- for each.
- (E) यथासंशोधित 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-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

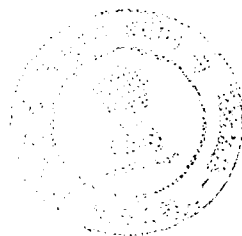
:: ORDER-IN-APPEAL ::

M/s. Adani Wilmar Limited, Village : Dhrub, Mundra – Kutch – 370 421 (hereinafter referred to as “Appellant”) filed an appeal against Orders-In-Original No. ST/166/2017-18 dated 22.05.2017 (hereinafter referred to as “impugned order”) passed by the Assistant Commissioner, Service Tax Division, Gandhidham- Kutch (hereinafter referred to as “the lower adjudicating authority”).

2. The brief facts of the case are that the appellant had filed application seeking refund of Service Tax paid by them on the services utilized for export, under Notification No. 41/2012-ST dated 29-06-2012, as amended (hereinafter referred to as “the said notification”), before the Lower Adjudicating Authority. The lower adjudicating authority has rejected refund of Rs. 2,51,756/- in respect of “SBC” and “KKC” vide impugned order with reason that refund of SBC and KKC are not admissible as there is no clarification for refund of SBC & KKC in the said notification.

3. Being aggrieved with the impugned order, the appellant filed this appeal, *inter-alia*, on the grounds that :-

- (i) The Lower Adjudicating Authority has already sanction SBC & KKC involved in their previous months refund claims and same were not appealed by the department.
- (ii) Without affording any opportunity to present their case and the lower adjudicating authority violated the principal of natural justice.
- (iii) The adjudicating authority has rejected refund in respect of SBC & KKC only reason in the impugned order that therein no clarification in the said notification was based on assumptions and presumptions.
- (iv) SBC & KKC have been introduced vide Sub section (5) of Section 119 of Finance Act, 2015 and Sub Section (5) of Section 161 of the Finance Act, 2016 respectively, shall be levied and collected as Service Tax and therefore, eligible for exemption / rebate under the provisions of said notification.
- (v) In the past Education Cess and Higher Education Cess imposed under Finance Act, 2004 and Finance Act, 2007 respectively and both have been refunded to exporters along with Service Tax. The appellant also submitted case laws of M/s. Cauvery Coffee Traders reported as 2013



(31) STR 126 (Tri. Bang.), M/s. Kundremukh Iron Ore Co. Limited reported as 2013 (31) STR 633 (Tri. Bang.) and M/s. Tumkar Minerals P. Ltd. reported as 2016 (41) STR 434 (Tri. Mum.) wherein it has been held that refund of Education Cess and Higher Education Cess is also admissible under the provisions of Notification 41/2007-ST dated 06.10.20117. The case laws are squarely applicable to present case.

4. Personal hearing in the matter was attended by Shri Shridev Vyas, Advocate, wherein he, inter alia, reiterated the grounds of appeal and submitted that the services have been used in the export of goods under Notification No. 41/2012-ST; that the Government intention is not to export tax and hence refund of SBV & KKC is to be allowed; that in a similar case of Automobile Cess, the Hon'ble High Court has allowed refund of Automobile Cess in the case of TVS Motor Co. Limited reported as 2015 (323) ELT 57 (Karnataka), though Notification No. 19/2004- CE (N.T.) also did not specifically said refund of Automobile Cess; that CESTAT, Bangalore also allowed refund of AED on HSD exported under Notification No. 22/2003-CE dated 31.03.2003 in a similar case of M/s. Transworld Garnet India P. Ltd. reported as 2017 (10) TMI 341 (Tri. Bang.); that in view of above, refund of SBC & KKC paid on services used in export of goods should be allowed.

FINDINGS:

5. I have carefully gone through the facts of the case, the impugned order, appeal memorandum and the submission of the appellant. The issue to be decided in the present case is as to whether the appellant is entitled for refund of SBC & KKC paid on services used for export of goods under Notification No. 41/2012-ST dated 29.06.2012 or otherwise.

6. I find that the lower adjudicating authority has held that refund of SBC & KKC is required to be rejected as there is no clarification regarding refund of SBC & KKC in Notification No. 41/2012-ST, whereas, the appellant has submitted that Notification No. 41/2012-ST is clearly stating to grant refund of service tax paid on the services used for export of goods and sub-section (2) of Section 119 of the Finance Act, 2015 and sub-section (2) of Section 161 of the Finance Act, 2016 clearly stipulate SBC and KKC as service tax respectively; that sub-section (5) of Section 119 of the Finance Act, and sub-section (5) of the Section 161 of the Finance Act, 2016 also stipulate that all provisions related to refund of service tax under Finance Act, 1994 shall be applicable to refund of

SBC & KKC. I find that above provisions were not taken into consideration by the lower adjudicating authority in the impugned orders.

7. I find it relevant to refer to Notification No. 41/2012-ST dated 29.06.2012 which allows refund of Service Tax, and opening Paragraph 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)

7.1 In view of above, I find that Notification No. 41/2012-ST dated 29.06.2012 grants refund 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. I would like to reproduce Chapter VI inserted vide Section 119 of the Finance Act, 2015, which is 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.*

(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)

7.2 I find that KKC is leviable by virtue of insertion of Section 161 of Finance Act, 2016, as service tax on the value of taxable services at the rates notified by the Central Government. I would like to reproduce Chapter VI inserted vide Section 161 of the Finance Act, 2016, which is as under:-

CHAPTER VI
KRISHI KALYAN CESS

SECTION 161. Krishi Kalyan Cess. — (1) This Chapter shall come into force on the 1st day of June, 2016.

(2) *There shall be levied and collected in accordance with the provisions of this Chapter, a cess to be called the Krishi Kalyan Cess, as service tax on all or any of the taxable services at the rate of 0.5 per cent. on the value of such services for the purposes of financing and promoting initiatives to improve agriculture or for any other purpose relating thereto.*

(3) *The Krishi Kalyan 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 1944), or under any other law for the time being in force.*

(4) *The proceeds of the Krishi Kalyan 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 Krishi Kalyan 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 (32 of 1944) 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 Krishi Kalyan Cess on taxable services, as they apply in relation to the levy and collection of tax on such taxable services under the said Chapter or the rules made thereunder, as the case may be.

(Emphasis supplied)

7.3 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) of the said Act specifies that the provisions of refund of Service Tax under Finance Act, 1994 shall apply to refund of SBC; and Section 161 of Finance Act, 2016 levied KKC on taxable services and Section 161(2) specifies KKC as Service Tax and Section 161(5) specifies that the provisions of refund of Service Tax under Finance Act, 1994 shall apply to refund of KKC. I also find that Section 119(1) of the Finance Act, 2015 stipulated 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.

7.4 It is clear that SBC has been levied as service tax only as has been stated to in 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/rebate. In view of discussions held above, I also find ample force in the arguments of the appellant that SBC & KKC though called cess but have been given status of service tax as is evident from Section 119(2) & Section 119(5) of Finance Act, 2015 and Section 161(2) & 161(5) of Finance Act, 2016 respectively.

7.5 I find that it is 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 & KKC, even if imposed

as Service Tax vide Section 119(2) of Finance Act, 2015 and vide Section 161(5) of Finance Act, 2016, shall not be allowed, which will mean 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 or to reverse the intention of the legislation.

8. 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 refund of service tax paid on the taxable services used for export of goods by an exporter. Since SBC & KKC, both have been treated as service tax, as detailed above, the rebate of SBC & KKC is allowable under Notification *ibid*.

8.1 I also find that Notification No. 39/2012-ST dated 20.12.2012 granting refund 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 and KKC; 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 & KKC, however no such amendment has been made in Notification No. 41/2012-ST dated 29.06.2012 because no amendment is required as explained below:-

8.2 Notification No. 39/2012-ST dated 20.12.2012 had allowed refund of service tax and cess and Explanation 1 was as under :-

Explanation-1

(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)



8.3 Therefore, there was need to add SBC & KKC as clause (d) and clause (e) vide Notification No. 3/2016-ST dated 03.02.2016 and Notification No. 29/2016-ST dated 26.05.2016 as because only Service Tax leviable under Section 66 or Section 66B of the Finance Act, 1994 had been covered under clause (a) and not Service Tax as imposed under Section 119 of the Finance Act, 2015 and Service Tax imposed under Section 161 of Finance Act, 2016.

8.4 Notification No. 12/2013-ST dated 01.07.2013 had specifically provided refund of service tax leviable under Section 66B of the Finance Act, 1994 whereas SBC & KKC have been levied as Service Tax under Section 119 of the Act inserted vide Finance Act, 2015 and Section 161 of the Act inserted vide Finance Act, 2016, respectively, 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 & KKC for refund under Notification No. 12/2013-ST as SBC & KKC are not leviable under Section 66B of the Finance Act, 1994; whereas Notification No. 41/2012-ST dated 29.06.2016 has allowed refund of service tax without specifying whether leviable under Section 66 or Section 66B of the Finance Act, 1994 and hence, no amendment in Notification No. 41/2012-ST was/is legally required to be undertaken.

9. In view of above factual & legal position, I set aside the impugned order and allow appeal filed by the appellant.

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

9.1 The appeal filed by the appellant is disposed off in above terms.

सत्यापित,
प्रधान सचिव
अपीलकर्ता (अपील)

(कुमार संतोष)
आयुक्त (अपील्स)

By Speed Post

To,

M/s. Adani Wilmar Limited, Village : Dhruv, Mundra – Kutch – 370 421	मेसर्स अदानी विलमर लिमिटेड, गाव : ध्रुव, मुँदरा-कच्छ – ३७० ४२१
--	--

Copy to:

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

