



::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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सत्यमेव जयते

रजिस्टर्ड डाक ए. डी. द्वारा :-

क	अपील / फाइल संख्या / Appeal / File No.	मूल आदेश सं / O.I.O. No.	दिनांक / Date
	V2/182/GDM/2018-19	16/UrbanRef/2017-18	19/09/2017

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

KCH-EXCUS-000-APP-132-2018-19

आदेश का दिनांक / Date of Order:	12.09.2018	जारी करने की तारीख / Date of issue:	14.09.2018
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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 Singhvi Trade link LLP, 102, Asopalav arcade, Plot No. 04, Sector 9-A Tagore Road, Gandhidham (Kutch).

इस आदेश(अपील) से व्यक्ति 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 क 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.

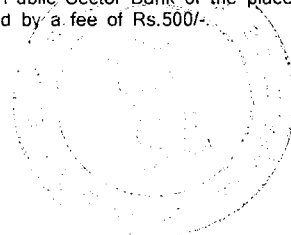
(ii) उपरोक्त परिच्छेद 1(a) में बताए गए अपीलों के अलावा शेष सभी अपीलों सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, , द्वितीय तल, बहुमाली भवन असावा अहमदाबाद- 380016 को की जानी चाहिए। /
 To the West regional bench of Customs, Excise & Service Tax 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) 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 माँग, ब्याज की माँग 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 माँग, ब्याज की माँग 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 होती 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 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 अर्जी 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 मामले 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, ससद 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 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 का 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 (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 संप्रेषण 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। / जहां 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-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 (कार्य विधि) नियमावली, 1982 में वर्णित एवं अन्य संबन्धित 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, 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 ::

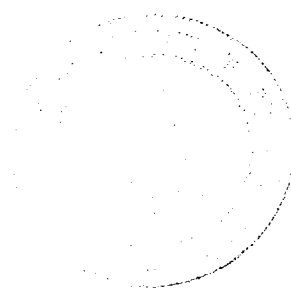
The present appeal has been filed by M/s. Singhvi Trade Link LLP, 102, Asopalav Arcade, Plot No. 04, Sector 9-A, Tagore Road, Gandhidham (Kutch) (hereinafter referred to as **'the appellant'**) against Order-In-Original No. 16/UrbanRef/2017-18 dated 19.09.2017 (hereinafter referred to as **'the impugned order'**), passed by the Assistant Commissioner, CGST Gandhidham (Urban) Division, Gandhidham (hereinafter referred to as **"the lower adjudicating authority"**):

2. Briefly stated the facts of the case are that appellant registered with Service Tax, exported excisable goods and filed Refund claim of Rs. 10,08,522/- along with relevant documents on 27.07.2017 for the month of April, 2017 under Notification No. 41/2012-ST dated 29.06.2012.

2.1 The lower adjudicating authority vide impugned order, rejected refund of Rs. 3,23,225/- out of total Refund claim of Rs. 10,08,522/- on the ground that Invoice involving Service Tax of Rs, 2,74,276/- was not in the name of appellant and there is no clarification issued by CBEC regarding refund of Swachh Bharat Cess and Krishi Kalyan Cess (Rs. 48,949/- involving both Cess) for export under Notification No. 41/2012-ST dated 29.06.2012.

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

- (i) The adjudicating authority has passed the impugned order without affording opportunity to the appellant as he neither issued any query memo nor any show cause notice. Therefore, it is clear violation of principles of natural justice.
- (ii) The appellant had exported Mill Scale containing gross weight of 20,700 MT. shipped from Kandla Port to Nanjing Port, China by the vessel "MV Le Rong" and for this purpose they had appointed M/s. COSCO Shipping Lime (India) P. Ltd. (M/s. COSCO), which had appointed agent M/s. Darashaow B. Cusetjee' Sons (Guj) P. Ltd. Kandla Port Trust had issued invoices in the name of M/s. Darashaw B. Cursejee' Sons (Guj.) P. Ltd. for the services of Berth Hire, Pilotage, Port Charges and Anchorage Charges, which were ultimately paid by the appellant along with Service Tax on the said Services. The appellant had submitted copies of export invoices,



original invoices issued by the service provider shipping bills, bill of lading, copies of the ledger of service provider from which it could have been easily co-related that the said services were utilized by the appellant.

- (iii) The appellant is exporting the goods continuously and the services of Kandla Port Trust are availed for the purpose of export of goods and loading of goods on the cargo is handled by Shipping Agents and the original invoices are always raised by Kandla Port Trust in the name of the Shipping Agent only. In the present refund claim, M/s. Darashaw B. Curetjees' Sons (Guj.) Ltd. being the shipping agent had paid port charges, anchorage charges, berth hire charges, pilotage charges etc. on behalf of the appellant and Invoice No. 2011704101470, 201704102048 and 201704110744 were issued by Kandla Port Trust. The Invoice can never be issued in the name of the appellant as the appellant was not a shipping agent but the exporter of the goods and borne the incidence of Service Tax.
- (iv) The adjudicating authority has not considered contention of appellant that name of ship 'MV Le Rong', arrival and departure date was also mentioned on said invoice issued by Kandla Port Trust, which can be easily correlated with the shipping bill. The lower adjudicating authority has rejected the refund claim without giving valid ground for rejecting substantive export benefit, expecting matching and co-relation of such documents with mathematical precision, which is not warranted for allowing refund under scheme of Notification No. 41/2012-ST.
- (v) CBEC vide Circular No. 120/01/2010-ST dated 19.01.2010 (Para-3.2) has clarified that Chartered Accountant's certificate for correlation and nexus between input services and exports was sufficient proof for allowing refund claim instead of submitting voluminous documents and records in relation to such refund claim. Another CBEC Circular No. 106/9/2008-ST dated 11.12.2008 was also issued clarifying that only random checks were required for such refund claims, and strict correlation between the documents not to be insisted upon. The appellant also relied on case of (1) M/s. Trident Ltd. reported as 2012 (28) STR 505 (2) M/s. Parmeshwari Textiles reported as 2011 (22) STR 625 (3) Cipla Engineering P. Ltd reported as 2011 22 STR 366.

- (vi) Rejecting refund of Rs. 48,949/- towards Swachh Bharat Cess (SBC) and Krishi Kalyan Cess (KKC) on the ground that there is no clarification regarding refund of SBC and KKC in the Notification No. 41/2012-ST is not correct, legal and proper.

4. The personal hearing in the matter was held wherein Shri Aditya S. Tripathi & Shri Amal P. Dave, both Advocate reiterated the grounds of appeal and submitted that they have been granted refund by same Division in June, 2017 but refund claim was rejected in September, 2017 without SCN & without any Personal Hearing / query memo giving them opportunity to explain their case; that the Service Tax, SBC & KKC all have been borne by them and they have paid the amount to their Agent wherein Kandla Port Trust has issued invoices to their Agent; SBC & KKC are required to be treated as Service Tax for the purpose of refund as per Sub Section (5) of Section 119 and Section 161 respectively.

Findings :

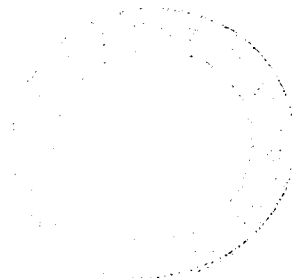
5. I have carefully gone through the facts of the case, the impugned order, the appeal memorandum and submissions made during the personal hearing. The issues to be decided in the present appeal are :

- (i) whether refund of Input Service used for export, where Invoice was not in the name of appellant allowed or otherwise.
- (ii) whether the appellant is entitled for refund of SBC & KKC paid on the services used for export of goods under Notification No. 41/2012-ST dated 29.06.2012 or not.

6. I find that the lower adjudicating authority has rejected refund claim of Rs. 3,23,225/- for reasons mentioned below :

Sr. No.	Reason for Rejection	Amount Rs.
01	Invoice not in the name of appellant	2,74,276/-
02	No clarification issued for Refund of SBC and KKC for export under Notification No. 41/2012-ST	48,949/-
	Total	3,23,225/-

6.1 I find that the refund of Rs. 2,74,276/- was claimed on account of Invoices



issued by Kandla Port Trust for goods exported by the appellant but invoice was issued in the name of their Shipping Agent as the Shipping Agent had paid port charges, anchorage charges, berth hire charges, pilotage charges etc. to the Port Trust on behalf of the appellant and recovered these charges from the appellant. The appellant has submitted following three (03) bills issued by the Kandla Port Trust in the name of Shipping Agent :

Sr. No.	Bill No. Date	Service Tax involved / paid Rs.
01	201704101470 04.04.2017	2,44,932/-
02	201704110744 22.04.2017	12,699/-
03	201704102048 06.04.2017	16,600/-
	Total Rs.	2,74,231/-

6.2 I find that the appellant, vide letter dated 27.07.2017, submitted all documents viz. Shipping Bills, Bill of lading, Export invoice, CA Certificate with his Rebate claim and the same were submitted before the appellate authority also. On perusal of all documents, it is easily correlate name of vessel, shipping bill number, name of shipping agent.

6.3 I find that being the shipping agent M/s. Darashaw B. Curetjees' Sons (Guj.) Ltd. had paid port charges, anchorage charges, berth hire charges, pilotage charges etc. on behalf of the appellant and as per the prevailing practice, the port has issued consolidated invoices in the name of shipping agent covering the transactions of the said shipping agent. It is on record that the entire amount including Service Tax has been borne by the appellant in this regard. Therefore, I find no infirmity if refund is granted to the appellant even if the invoices have been issued by Kandla Port Trust in the name of shipping agent and not in the name of the appellant as because the appellant has borne the incidence of Service Tax of Rs. 2,74,231/- as is evident from the records.

7. I also find that the lower adjudicating authority has rejected refund of Rs. 48,949/- SBC & KKC on the ground that 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 the above provisions were not taken into consideration by the lower adjudicating authority in the impugned orders and hence, the impugned orders are not correct, legal and proper.

7.1 The opening paragraph of Notification No. 41/2012-ST dated 29.06.2012, which allows refund of Service Tax 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)

7.2 In view of above, 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, which reads 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)

7.3 I also 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, which reads 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)

7.4 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.

7.5 It is very 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.

7.6 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*.

9. 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:-

9.1 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;

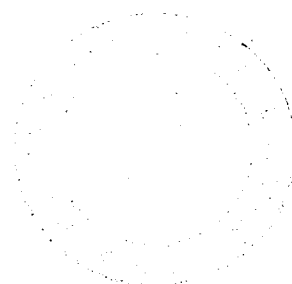
(b) *education cess means education cess on taxable service levied under section 91 read with section 95 of the Finance (No.2) Act, 2004 (23 of 2004);*

(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)

9.2 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 imposed under Section 119 of the Finance Act, 2015 and Service Tax imposed under Section 161 of Finance Act, 2016.

9.3 Notification No. 12/2013-ST dated 01.07.2013 also had specifically provided refund of service tax leviable under Section 66B of the Finance Act, 1994 whereas SBC & KKC have been levied 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 29.06.2012 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 required to be undertaken.

10. The Additional Secretary (RA), Government of India, Mumbai vide his Order No. 114-129/2018-ST(WZ)/ASRA/Mumbai dated 05.04.2018 has upheld refund of SBC and KKC paid on the services for export of goods under Notification 41/2012-ST by holding earlier similar order issued by this office on refund of SBC & KKC vide OIA No. KCH-EXCUS-000-APP-114 to 121-2017-18 & OIA No. KCH-EXCUS-000-APP-128 to 135-2017-18 both dated 05.12.2017.

11. In view of the above facts and legal position, I set aside the impugned order and allow the appeal for refund of Rs. 3,23,180/- (Rs. 2,74,231/- plus Rs. 48,949/-) to the appellant.

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

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

सत्यापित,
14/09/2018
उदाय धामर
अतिरिक्त (अपील्स)

18/09/2018
(कुमार संतोष)
आयुक्त (अपील्स)

By Speed Post

To,

M/s. Singhvi Trade Link LLP, 102, Asopalav arcade, Plot No. 04, Sector 9-A, Tagore Road, Gandhidham (Kutch)	मेसर्स सिंघवी ट्रेड लिंक एल एल पी, १०२, आसोपालव आर्केड, प्लॉट नं ९-ए, सेक्टर ९-ए, टागोर रोड, गांधीधाम - (कच्छ)
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Copy to:

- 1) The Chief Commissioner, GST & CX, Ahmedabad Zone, Ahmedabad
- 2) The Commissioner, GST & CX, Gandhidham Comm'ate, Gandhidham
- 3) The Assistant Commissioner, GST & CX (Urban) Division, Gandhidham
- 4) Guard File.

