F.No.198/15-22/WZ/2018-RA
F. No.198/23-30/WZ/20138RA

SPEED POST
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सत्यमेव जयते
GOVERNMENT OF INDIA
MINISTRY OF FINANCE
DEPARTMENT OF REVENUE

Office of the Principal Commissioner RA and
Ex-Officio Additional Secretary to the Government of India
8th Floor, World Trade Centre, Cuffe Parade,
Mumbai- 400 005

F.No.198/15-22/WZ/2018-RA /107
F. No.198/23-30/WZ/2018RA

Date of Issue: 17.04.2018

ORDER NO. 114-129 /2018-ST (WZ)/ASRA/MUMBAI DATED 05.04. 2018 OF THE GOVERNMENT OF INDIA PASSED BY SHRI ASHOK KUMAR MEHTA,PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO THE GOVERNMENT OF INDIA, UNDER SECTION 35EE OF THE CENTRAL EXCISE ACT, 1944.

Applicant : Assistant Commissioner of CGST Gandhidham (Urban) Division

Respondent : M/s SRK Chemicals Limited, Gandhidham.

Subject : Revision Applications filed, under Section 35EE of the Central Excise Act, 1944 against the following Order-in-Appeals passed by the Commissioner of Central Excise (Appeals), Mumbai –III :-

(1) Order in Appeal No. KCH-EXCUS-000-APP-128-TO-135-2017-18.

(2) Order in Appeal No. KCH-EXCUS-000-APP-114-TO-121-2017-18.

ORDER

These 16 (sixteen) revision applications are filed by the Assistant Commissioner of CGST Gandhidham (Urban) Division (hereinafter referred to as "the applicant") against the following Order-in-Appeals passed by Commissioner (Appeals), GST & Central Excise, Rajkot.:-

RA. No. 198/15-22/WZ/2018-RA (Eight Applications):

Order in Appeal No. KCH-EXCUS-000-APP-128-TO-135-2017-18.

RA. No. 198/23-30/WZ/2018RA (Eight Applications)

Order in Appeal No. KCH-EXCUS-000-APP-114-TO-121-2017-18.

2. The issue in brief is that the M/s. SRK Chemicals Ltd. (hereinafter referred to as "the respondent") had filed sixteen rebate claims with the jurisdictional Assistant Commissioner of Service Tax Division, Gandhidham (hereinafter referred to as "the adjudicating authority") claiming rebate of the service tax paid by the respondent for the services utilized by them for export of goods in terms of Notification No. 41/2012-ST, dtd.29.06.2012. All those sixteen rebate claims were sanctioned by the adjudicating authority in respect of the Service Tax amount claimed by the claimant therein, but the claims for rebate of Swatch Bharat Cess (hereinafter referred to as "SBC") and Krishi Kalyan Cess (hereinafter referred to as "KKC") were deducted from the total amount of rebate claimed by the claimant. In this connection, eight OIOs were passed by the adjudicating authority on the grounds that there is no clear provision for rebate of SBC and KKC in terms of Notification No. 41/2012-ST, dtd.29.06.2012. Further, while sanctioning the rebate claim in respect of the OIO No. ST/513/2016-17, dtd.29.12.2016, the Assistant Commissioner of Service Tax, Gandhidham further deducted the amount of Rs.1,16,322/-, which was already sanctioned and disbursed to the claimant under previous orders without issuance of SCN for recovery of such erroneous refunds under Section 73(1) of the Finance Act, 1994. The Particulars of those sixteen claims and the respective OIOs passed by the adjudicating authority are as follow:

Sr. No.	OIO No. and date	Period of rebate claim	Amount of rebate rejected (Rs.)
1	ST/513/2016-17, dtd.29.12.2016	October, 2016	197656 (81,334 /- for present claim + 1,16,322/- deducted for previously sanctioned claims of SBC and KKC)

2	ST/625/2016-17, dtd.27.02.2017	November,2016	78382
3	ST/624/2016-17, dtd.27.02.2017	November,2016	63106
4	ST/623/2016-17, dtd.27.02.2017	December, 2016	47746
5	ST/184/2017-18, dtd.23.05.2017	January, 2017	108774
6	ST/185/2017-18, dtd.23.05.2017	February, 2017	100386
7	ST/183/2017-18, dtd.23.05.2017	March, 2017	100502
8	ST/295/2017-18, dtd.22.06.2017	April, 2017	98090
	TOTAL (1 to 8)		**794642** (6,78,320/- for present claims + 1,16,322/- deducted for previously sanctioned claims of SBC and KKC)
9	ST/294/2017-18, Dtd.22.06.2017	May, 2017	1,00,946
10	ST/293/2017-18, Dtd.22.06.2017	April, 2017	90,444
11	ST/292/2017-18, Dtd. 24.08.2017	May, 2017	1,26,782
12	ST/263/2017-18, Dtd.15.06.2017	Feb, 2017	93,308
13	ST/262/2017-18, Dtd.15.06.2017	March, 2017	1,02,202
14	ST/318/2017-18, Dtd.23.06.2017	Feb, 2017	12,532
15	ST/315/2017-18, Dtd.23.06.2017	Feb, 2017	10,730
16	ST/261/2017-18, Dtd.15.06.2017	March 2017	80,226
Total	**(9 to 16)**		**6,17,170**

3. Being aggrieved by the rejection of the rebate claims of SBC and KKC, the claimant filed sixteen appeals (two sets of eight appeals each against Order in Original at Sr.No. 1 to 8 and Sr.No. 9 to 16 above) against respective OIOs passed by the adjudicating authority, on the common issue of non-sanction of their claim for rebate of SBC and KKC. All these appeals were raising the limited issue of non-sanction of rebate claims of SBC and KKC within the purview of Notification No. 41/2012-ST, dtd.29.06.2012 as well as the improper deduction of Rs.1,16,322/- in the OIO No. ST/513/2016-17, dtd.29.12.2016 and no other issue was raised therein.

4. The Commissioner of GST and Central Excise (Appeals), Rajkot clubbed all the eight appeals (of two sets) together, as the issue involved in all the aforesaid appeals was identical. During the process on the appeals, it was

observed by the Commissioner of GST and Central Excise (Appeals), Rajkot that the rebate claims were rejected in respect of SBC and KKC quantum without any notice to the claimant and without granting them any opportunity of hearing prior to the rejection. The adjudicating authority rejected the claims for rebate of the SBC and KKC quantum on the pre-text that there is no clear provision regarding rebate of SBC and KKC in terms of Notification No. 41/2012-ST. In terms of Section 119(2) of the Finance Act, 2015 and Section 161(2) of the Finance Act, 2016, the SBC and KKC are to be treated as "Service Tax" only; as stipulated therein, all provisions relating to Service Tax will equally applicable for SBC and KKC; these provisions were not taken into consideration by the adjudicating authority. As regards the deduction of Rs.1,16,322/- made in the OIO No. ST/513/2016-17, dtd.29.12.2016, which was already sanctioned and disbursed to the claimant under previous orders without issuance of SCN for recovery of such erroneous refunds under Section 73(1) of the Finance Act, 1994, it was held as not correct, legal and proper at all. Considering the above, the Commissioner of GST and Central Excise (Appeals) ordered for setting aside all the eight OIOs and thereby allowed the appeals vide Order-in-Appeal No. KCH-EXCUS-000-APP-114 to 121-2017-18, dated 05.12.2017. Similarly, Commissioner GST and Central Excise (Appeals) ordered for setting aside all the eight OIOs (other set of appeals) and thereby allowed the appeals vide Order-in-Appeal No. KCH-EXCUS-000-APP-128 to 135-2017-18, dated 11.12.2017

5. Since the issue involved in the impugned Order-in-Appeal, was relating to a service which was exported, and which has been passed under Section 85 of the Finance Act, 1994 and the matter related to grant of rebate of service tax on input services, used in providing such service, such Order-in-Appeal had been dealt with in accordance with the provisions of Section 35EE of the Central Excise Act. 1944. Further to this, as provided in Section 119(5) of the Finance Act, 2015, the provisions of Section V of the Finance Act, 1994 and the rules made thereunder shall, as far as may be, apply in relation to the levy and collection of the SBC 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. Same way, in terms of Section 161(5) of the Finance Act, 2016, the provisions of Section V of the Finance Act, 1994 and the rules made thereunder shall, as far as may be, apply in relation to the levy and collection of the KKC 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. In the instant case, since the impugned Order-in-Appeal was

relating to the rebate of SBC and KKC claimed on the services exported, such Order-in-Appeal had been dealt with in accordance with the provisions of Section 35EE of the Central Excise Act. 1944 read with First Proviso to Section 86(1) of the Finance Act, 1994, Section 119 of the Finance Act, 2015 and Section 161 of the Finance Act, 2016. Accordingly, after being aggrieved by these Orders in Appeal, the Department filed aforementioned Revision Applications against the impugned Order in Appeals on following grounds :

5.1 The Commissioner (Appeals) has wrongly concluded that Chapter VI of the Finance Act, 2015 pertaining to the enabling provisions for levy of "Swachh Bharat Cess" and Chapter VI of the Finance Act, 2016 pertaining to the enabling provisions for levy of "Krishi Kalyan Cess" on the Services are "Service Tax" itself and accordingly the rebate of SBC and KKC are available to the export made alongwith the rebate claimed under Notification No 41/2012-ST, dtd.29.06.2012.

5.2 So far as it relates to SBC, the approach of the Government relating to levy of SBC is very clear and specific. The Commissioner (Appeals) was required to refer to the CBEC released FAQ dated 14.11.2015, wherein it was amply clarified that SBC shall not be available as Cenvat Credit and liability of same cannot be discharged by utilizing Cenvat Credit. Question No. 14 of said FAQ dealing with the issue is reproduced as under:

*"**Q. 14**: Whether Cenvat Credit of the SBC is available?*

***Ans.**: SBC is not integrated in the Cenvat Credit Chain. Therefore, credit of SBC cannot be availed. Further, SBC cannot be paid by utilizing credit of any other duty or tax."*

From the above, it is very clear that the Board is categorically clear that without amendment in Rule 3 of CENVAT Credit Rules, 2004, Cenvat credit of SBC paid on input services shall not be allowed and the liability of same also cannot be paid by utilizing Cenvat Credit. The Board may also be relying on the fact that for Education Cess (EC) and for Secondary and Higher Education Cess (SHEC), Cenvat Credit Rules were specifically amended to allow their availment of Cenvat Credit and utilization of Cenvat Credit for discharge of their liabilities. However, no specific amendment has been carried out in the Cenvat Credit Rules, 2004 for allowing Cenvat Credit of SBC and therefore, SBC paid on input services

shall not be available as Cenvat Credit. Apparently this analogy leads to indicate that the SBC is being altogether an independent levy from Service tax and it although being levied and collected in the manner as provided under the provisions of the Finance Act, 1994, as the case may be, the same may not construe that it becomes rebatable treating the same as "service tax" for the purpose of Notification No. 41/2012-ST, dtd.29.06.2012.

5.3 The same is the case of KKC, being levied under Chapter VI and Section 161 of the Finance Act, 2016, which is extended for Cenvat credit benefits limited to the payment of KKC only and same way not available for rebate within the scope of given provisions of law.

5.4 The Commissioner (Appeals) did not extend his attention to the fact that when the provisions of Notification No. 39/2012-ST, dated 20.06.2012, were amended by Notification No. 03/2016-ST, dated 03.02.2016, so as to provide for rebate of SBC paid on all services used in providing services which are exported in terms of Rule 6A of the Service Tax Rules, the similar amendment was not carried out in respect of Notification No. 41/2012-ST, dtd.29.062012. Further, Notification No. 12/2013-ST, dated 01.07.2013 was also amended vide Notification No. 02/2016-ST, dated 03.02.2016, so as to allow exemption of SBC paid on the specified services used in an SEZ in the form of refund, whereas, no such amendment has been made by the Government so far as it relates to rebate under Notification No. 41/2012-ST, dated 29.06.2012 and the said Notification does not provide in it for such specific mention of rebate of SBC as has been specifically provided by the Board and the Government, vide Notification No. 02/2016-ST and 03/2016-ST.

5.5 In respect of KKC also when the Government amended the provisions of Cenvat Credit Rules vide Notification No. 28/2016-CE (NT), dtd.26.05.2016, providing that credit of any duty specified in Rule 3(1) of the CCR, 2004 can not be utilised for the payment of KKC leviable under Section 161 of the Finance Act, 2016. This apparently detached the KKC from bringing the same within the shelter of any other duty or taxes and making it an independent levy. The Government gave scope for taking Cenvat credit of KKC but allowed utilisation thereof for payment of KKC only and for no other purpose. Hence, KKC was never linked with Service tax, as

being viewed from the inception of said levy. The Notification No. 39/2012-ST, dtd.20.06.2012 and 12/2013-ST, dtd.23.06.2016 made specific provisions for rebate and exemption of KKC in specific cases. No such provision of rebate embodied within the Notification No. 41/2012-ST, dtd.29.06.2012. Hence remaining silent on such clearly comparable and crucial aspects, the Commissioner (Appeals) has rendered an order which is required to be quashed.

5.6 The Commissioner (Appeals) grossly failed to consider the very basic facts, as discussed above, that Cenvat Credit of SBC is not at all available and in such scenario, consequent rebate of SBC under Rule 5 of Cenvat Credit Rules, 2004, would also not be available. Thus this would lead to a scenario, as discussed above, where only the SEZs are entitled to claim exemption of SBC on their input services used on export but on the other hand EOUs and other major exporters are not entitled to similar exemption benefit and their exports has to bear the burden of SBC. When apparent intention of the Government is to put burden of such Cess on the services, how the same can be given a different scope by allowing its rebate under incorrect interpretation of relevant law.

5.7 Further, while allowing the appeal filed by the claimant granting the claimant a consequent benefits of rebate of SBC and KKC, , the Commissioner (Appeals) has expressly not clarified under which specific authority of the Board such rebate of SBC and KKC under Notification No. 41/2012-ST, dtd.29.06.2012 would be permissible. On the contrary, it is amply clarified by the Board that SBC is not eligible for Cenvat Credit and KKC is eligible for Cenvat credit for the purpose of payment of KKC only. Thereby, it can be said that what is not allowed under Cenvat Credit route is generally not allowed under rebate also.

5.8 The Commissioner (Appeals) has in undue manner stretched the words "Service tax paid" provided in Notification No. 41/2012-ST, dtd.29.06.2012 to include SBC and KKC within that word "Service tax paid", when no such intention of the Government is apparently available on reading those wordings in its strict sense or even upon plain reading of the same. The Commissioner (Appeals) is not empowered to interpret the law and to provide any answer to the legality of any particular provisions of law. By going beyond the

authority and the powers vested in the Commissioner (Appeals) and that too in totally incorrect manner, the Commissioner (Appeals) has rendered an order which does not deserve to be sustained, as the same is neither legal nor proper in any manner.

5.9 "The Cess, to be collected as Service Tax" does not convert by virtue of those words any "Cess" into a "service tax", but such Cess for all purpose remains "Cess" only. Had it been the intention of the Government to consider the "Cess" at par with "Service Tax", there would not have been any need for separate provisions to govern the levy and collection of those "Cess" within the scope of the Finance Act, 2015 or Finance Act, 2016. Apparently, there is no intention of merger of "Cess" within the ambit of "Service tax", then how there can be intention to grant rebate the "Cess" under Notification No. 41/2012-ST, dtd.29.06.2012 merely extending the term "Cess" within the scope of "Service Tax" and without any specific provisions for their rebate and that too without mention of "SBC" or "KKC" within it. Therefore, the Order passed by the Commissioner (Appeals) is derived upon incorrect interpretation of relevant law and it is beyond the jurisdiction vested into the Commissioner (Appeals).

5.10 The Commissioner (Appeals) has failed to consider the context of "Service tax" provided in relevant Section 119 of the Finance Act, 2015, because any Cess, which is being collected under Finance Act, 2015 or Finance Act, 2016 as "service tax" does not mean that it becomes "service tax", which is being collected within the authority of Finance Act, 1994. All "taxes" are not "Service tax", same way difference provided in different "Cess" keeps those Cess to remain within its distinct identity and accounting method without being influenced by the manner of its collection provided as in the manner of "Service Tax". Even the SBC and KKC are also having distinct identity, which is clear from the different provisions relating to the eligibility of both such cess for Cenvat purpose. Thus, all these terms "Service Tax", "SBC" and "KKC" are having distinct character and it can not be replaced by any or each of them, even in any imaginary manner. The fiction created by law to levy and collect the SBC and KKC as "Service Tax" is in its limited context to provide a manner and it has no intention to merging the

identity of any of those terms, and apparently not in the context of Notification No. 41/2012-ST, dtd.29.06.2012.

5.11 The Commissioner (Appeals) has made findings that the rate of SBC @2% made vide Section 119(2) of the Finance Act, 1995 was reduced @0.5% vide a Notification issued under Section 93(1) of the Finance Act, 1994, giving it a meaning that SBC is nothing but "service tax" which is chargeable under Section 93(1) of the Finance Act, 1994. This is totally a hyped interpretation, as the exemption, which was granted vide Notification No. 22/2015-ST, dtd. 06.11.2015 for levy of SBC from 2% to 0.5% is not exempting purely within the scope of the provisions of Section 93(1) of the Finance Act, 1994, but that exemption is embodied with the exempting provisions of Section 119(5) of the Finance Act, 2015 also. The wordings of the Notification are reproduced below for correct interpretation of the legal provisions:

> "In exercise of the powers conferred by sub-section (1) of section 93 of the Finance Act, 1994 (32 of 1994) read with **sub-section (5) of section 119 of the Finance Act, 2015 (20 of 2015),** the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts all taxable services from payment of such amount of the Swachh Bharat Cess leviable under sub-section (2) of section 119 of the said Act, which is in excess of Swachh Bharat Cess calculated at the rate of 0.5 percent. of the value of taxable services:
>
> Provided that Swachh Bharat Cess shall not be leviable on services which are exempt from service tax by a notification issued under sub-section (1) of section 93 of the Finance Act, 1994 or otherwise not leviable to service tax under section 66B of the Finance Act, 1994.
>
> This notification shall come into force from the 15th day of November, 2015."

Had it been the intention of the Government to grant rebate of SBC within the scope of Notification No. 41/2012-ST, dtd.29.06.2012, the Government would have made similar "read with" provisions within the Notification No. 41/2012-ST, dtd.29.06.2012 to club the provisions of Section 93A with Section 119 of the Finance Act, 2015. By making the provisions limited for the Section 93A of the

Finance Act, 1994, the Government has given apparent indication that what is covered within the scope of it and what is not covered within the scope of it. What is not covered therein is eligibility for rebate of SBC and KKC and by passing the impugned order; the Commissioner (Appeals) has given coverage to what is not intended to get covered therein. The order passed by the Commissioner (Appeals), therefore, requires to be nullified.

5.12 The Rebate under the provisions of a particular law is governed by the provisions of that particular law and not by any Policy statement being made from the Government with reference to the same, till such statement are getting legal approval or the Such statement is covered within the scope of legal interpretation within the authority of the High Court or the Supreme Court. The Commissioner (Appeals) has made grave error in falling for a wrong interpretation and incorrect appreciation of given legal provisions. The order passed in this context suffers from incorrect interpretation and for that reason being perverse not liable to be upheld.

5.13 The claimant in the instant case had relied upon the Case law of TVS Motor Co. Ltd. [2015-TIOL-1478-HC-KAR.] = [2015(323) ELT 57 (Kar.)] and Shree Renuka Sugar Ltd. [2014-TIOL-98-HC-KAR-CX] =[2014(302) ELT 33 (Kar.)], but both these cases are not in the context of SBC or KKC, but they are in the context of Automobile Cess and Sugar Cess respectively, levy of both those cesses are governed by the relevant law and not under the Finance Act, 2015 or Finance Act, 2016. Hence, they were not relevant in the context of the present case. Even otherwise, against the both the said orders, which were pronounced by Karnataka High Court at the relevant time, the appeals have already been filed by the department, vide SLA(C) No. CC 10093-10096 and SLA(C) No. CC 12930/2014 respectively, which have been admitted by Supreme Court on 04.07.2016 and 12.09.2014 respectively [2016 (342) ELT A 56 (SC)] and [2015 (319) ELT A119 (SC)] Both the appeals filed by the department are anticipating necessary consideration of relevant legal provisions by the apex court, till then the said orders of Karnataka High Court relied upon by the claimant are not good case law. Irrespective, the final verdict of the Apex Court in both the cases, it would be pertinent to mention here that in the case of Sugar Cess, the CESTAT, WZB, Ahmedabad has already

pronounced in the case of M/s. Sahakari Khand Udyog Mandali Ltd. [2008(232) ELT 61 (Tri.-Ahmd.) that Sugar Cess though collected by the department of revenue, is not a duty of excise, as it is not levied by the Ministry of Finance and this decision of CESTAT has been upheld by the High Court of Gujarat in the order passed on the Tax Appeal No. 532/2009 filed by the department [2011 (263) ELT 34(Guj)]. Thus, the SBC and KKC being altogether a different levy, can not get governed within the provisions of Notification No. 41/2012-ST, dtd.29.06.2012. It would be pertinent to mention here that the amount collected as SBC goes into non-lapsable Rashtriya Swachhata Kosh, from which the Ministry of Drinking Water and Sanitation is making expenditure. Thus, SBC is not a fund dedicated to the Ministry of Finance. Same way collection of KKC goes into the hands of Ministry of Agriculture for spending the collected cess towards the crucial schemes like crop insurance, interest subsidy on crop loans etc. Thus, the SBC and KKC are not to be termed as "Service Tax" within the given context of Notification No. 41/2012-ST, dtd.29.06.2012.

5.14 The Notification No. 41/2012-ST, dtd.29.06.2012 is basically a rebate Notification, which has been given effect in the form of refund of service tax. So the exemption intended therein is limited to the service tax paid. The rebate of service tax does not mean rebate of SBC or KKC, without being provided the same expressly in the said Notification. In the case of Modi Rubber Ltd. and others, the Supreme Court has already ruled that exemption from duty of excise does not mean exemption also from the Special Excise duty, additional excise duty or auxiliary duty. [1986 (25) ELT 849 (SC)]. In the same manner in the instant case the rebate of Service Tax provided within the Notification can not be extended to the SBC and KKC. Hence, in the absence of specifically provided scheme of rebate within the purview of given provisions of Notification No. 41/2012-ST, dtd.29.06.2012, the same can not be given unmitigated scope for grant of rebate of SBC and KKC.

6. Consequently, in view of the facts and circumstances of the case and the statutory provisions, the applicant contended that the Orders-in-Appeal No. KCH-EXCUS-000-APP-114 TO 128-2017-18, dated 05.12.2017 and KCH-EXCUS-000-APP-128 TO 135-2017-18, dated 11.12.2017 passed by the Commissioner of GST and Central Excise (Appeals), Rajkot in the case of respondent viz. M/s. SRK Chemicals Ltd., Neelkanth, BBZ-S-60, Zanda Chowk,

Gandhidham-Kutch (Gujarat)-37020, are not legal and proper and hence, the same needed to be set aside.

7. The respondent vide Notice dated 13.03.2018 issued under Section 35 EE of the Central Excise Act, 1944 were called upon to show cause as to why the said Orders in Appeals should not be annulled or any other order as deemed fit be passed by the Government on the grounds stipulated in the said revision application. The respondent vide its letter dated 27.03,2018 filed reply/cross objections to show cause notice in respect of each revision application individually, on following common submissions that:-

7.1 before filing para wise cross-objections to the ground mentioned in the revision application following facts are being submitted for kind perusal of the Government:

(i) that the applicant is having different standards for Swachh Bharat Cess (SBC) and Krishi Kalyan Cess (KKC) while applying the provisions of The Finance Act,1994. While demanding non-payment or short-payment of SBC and KKC, it is considering both as 'Service Tax' but while granting refund/rebate it is considering it as an 'independent levy' despite the fact that it is only the provisions Section 5 of the Finance Act,2015 and 2016 which enables 'levy and collection' as well as 'refunds & exemptions';

(ii) in para 1.4 of the application it is mentioned that since the issue involved in the impugned Order-In-Appeal, is relating to a service which is exported and which has been passed under Section 85 of the Finance Act, 1994 and the matter relates to grant of rebate of service tax on input services, used in providing such service, such orders-in-Appeal will have to be dealt with in accordance with the provisions of section 35EE of the Central Excise Act, 1944. Further to this as provided in Section 119(5) of the Finance Act, 2015, the provision of section V of the Finance Act, 1944 and the rules made thereunder shall as far as may be apply in relation to the levy and collection of the SBC 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 under thereunder as the case may be. Same way in terms of Section 161(5) of the Finance Act, 2016, the provisions of section V of the Finance Act, 1994 and the rules made thereunder shall as far as may be apply in relation to the

levy and collection of the KKC 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. In the instant case since the impugned order-in-Appeal is relating to the rebate of SBC and KKC claimed on the services exported, such Order-in-Appeal will have to be dealt with in accordance with the provisions of section 35EE of the Central Excise Act. 1944 read with First Proviso to Section 86(1) of the Finance Act, 1944, Section 119 of the Finance Act, 2015 and Section 161 of the Finance Act, 2016. From the above facts only, it may be seen that the applicant itself had conceded that this matter is related to rebate of service tax and that the provisions of Section 119 and Section 161 of the Finance Act,2015 and 2016 respectively will apply. This is exactly what the claimant is submitting persistently. It is quite intriguing that for the purpose of levy and collection, issuing order-in-original, filing of appeal and filing of revision application, the applicant does not ponder to distinguish between service tax and SBC or KKC, but it is only for the purpose of granting rebate of SBC/KKC, it considers that both are independent. That if the contention of the applicant is considered to be true then, it may kindly be examined as to applying what provisions, the present application has been by the applicant made under Section 35EE of the Central Excise Act,1944. Claimant submits that if 'Cess' is not to be construed as 'Service Tax' unless exclusively specified, then provisions of Section 35EE may not be made applicable to the Finance Act,1994 atleast for the purpose of filing this revision application and may be rejected on this ground alone;

(iii) the applicant had mentioned such grounds in the revision application, which were never part of the order-in-original rejecting the rebate/refund. Neither such issues were a part of show cause notice required to be issued for rejection of refund/rebate, as no such notice was issued;

(iv) that the applicant had mentioned such grounds in the revision application that defeats the very purpose of granting refund/rebate of the taxes/cesses suffered in case of exports, which are being granted with the underlying principles that 'taxes should not be exported'; With above submissions, the claimant is submitting

para-wise reply/cross objections to the grounds of revision application:

7.2 (i) **Cenvat credit of Swachh Bharat Cess paid on input services is not allowed and that what is not allowed under Cenvat Credit route is generally not allowed under refund or exemption.**

7.2.1 this perception appears to be not tenable as Cenvat Credit Scheme and Refund/Rebate or granting exemption is independent of each other and not co-related. Both are granted for certain specific purpose purely as a matter of policy. Further this perception gets vacated at the first instance as, there is no confusion regarding the fact that rebate of Swachh Bharat Cess is being allowed under notification no.39/2012-ST dated 20.06.2012 as amended by notification no.3/2016-ST dated 03.02.2016 and exemption by way of refund of service tax paid on the specified services by notification no.12/2013-ST dated 01.07.2013 as amended by notification no.2/2016-ST dated 03.02.2016.

7.2.2 It is a fact that rebate/refund and exemption is available in respect of Swachh Bharat Cess though it may not be available under CENVAT credit scheme and vice-versa. It is also submitted that if this logic is taken as true then rebate of Krishi Kalyan Cess should be allowed as it is allowed as Cenvat credit.

(ii) Notification no.39/2012-ST dated 20.06.2012 has been amended by notification no.3/2016-ST dated 03.02.2016, so as to provide for rebate of Swachh Bharat Cess there is no such amendment in notification no.41/2012-ST dated 29.06.2012.

7.3 In this context, it is humbly submitted that this amendment itself displays the very intention of granting rebate of Swachh Bharat Cess. The reasons for such amendment is that, in the original notification no.39/2012-ST dated 20.06.2012 there was an explanation regarding as to what 'Service Tax and Cess' means

Explanation 1. - For the purposes of this notification "service tax and cess" means,-

(a) service tax leviable under section 66 or section 66B of the Finance Act, 1994 (32 of 1994);

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

(c) Secondary and Higher Education Cess on taxable services levied under section 136 read with section 140 of the Finance Act, 2007 (22 of 2007).

7.3.1 From the above explanation it may please be seen that the words used in the explanation was 'service tax leviable under section 66 or section 66B of the Finance Act, 1994 (32 of 1994)' and by use of phrase 'under section 66 or section 66B' a confusion was created regarding granting rebate of Swachh Bharat Cess and later on of Krishi Kalyan Cess as both these Cesses were collected as 'Service Tax' by virtue of Section 2 of Finance Act,2015 and Finance Act,2016 respectively and not under Section 66 or 66B of the Finance Act,1994. When this mistake was noticed and the intention was to grant rebate of entire Service Tax whether collected under the provisions of Finance Act,1994 or under the provisions of Finance Act,2015 and Finance Act,2016, enabling amendments were done in notification 39/2012-ST dated 20.06.2012, so as to grant rebate of amount of Swachh Bharat Cess and Krishi Kalyan Cess as was intended. The very amendment shows the intention of the Government to allow rebate of entire Service Tax as taxes are not to be exported.

7.3.2 in the notification no.41/2012-ST dated 29.06.2012, under which rebate has been filed, there was no such qualification i.e. ' leviable under Section 66 or 66B' and the words used were 'rebate of Service Tax paid', which obviously included Service Tax paid under Section 66 or 66B of the Finance Act,1994 as well as levied and collected under Section 2 of Finance Act,2015 and Finance Act,2016. As there was no confusion or unintended exclusion, no such amendment was made in notification 41/2012-ST dated 20.06.2012. As such no parallel may be drawn while comparing both these notifications. It is also submitted that all the referred notifications are self-contained notifications and may not be linked with each other. What is to be seen is that whether in the notification no.41/2012-ST dated 20.06.2012, Service Tax includes 'Swachh Bharat Cess' and 'Krishi Kalyan Cess' or otherwise.

7.3.3 Claimant submits that though in the entire application, the logic, the judgments, the interpretations and the flaws in the order of Commissioner (Appeals) has been discussed in a way to impress that SBC or KKC is an independent levy and may not be covered under the provisions of the Finance Act, 1994 for equating it with Service Tax and that rebate/refunds may not be granted as both the Cesses may not be taken as 'Service Tax'. By citing the other notification on rebate/refund/exemptions, the applicant's ground gets demolished as in all such notifications, the underlying spirit is to grant rebate/refund/exemption and there is no logic or reason on the part of the Government to grant such rebate/refund in all other cases where it can be granted and restrict rebate/refund ONLY in case where such input service are used for export.

(iii) Notification no. 12/2013-ST dated 01.07.2013 was also amended vide notification no.2/2016-ST dated 03.02.2016, so as to allow refund of Swachh Bharat Cess paid on specified services used in an SEZ, whereas no such amendment has been made in notification 41/2012- ST dated 29.06.2012.

7.4 In notification no.12/2013-ST dated 01.07.2013 also the words used were 'exempts the services on which service tax is leviable under section 66B of the said Act' and the exemption was granted by way of refund. As submitted supra, in this notification also use of words 'service tax leviable under Section 66B' was creating confusion and causing unintended exclusion of Swachh Bharat Cess and Krishi Kalyan Cess, which were levied and collected as per Section 2 of Finance Act,2015 and Finance Act,2016 respectively. To correct this and providing the intended exemption (by way of refund) this notification was also amended vide notification no.2/2016-ST dated 03.02.2016.

7.5 From the above facts and discussion it may kindly be seen that the intention of the Government was that no service tax be exported and as such in both the cases it was suitably amended. By not amending notification no 41/2012-ST dated 29.06.2012 also vindicates the stand of the claimant that Government was sure that Service Tax includes both those collected under Finance Act, 1994 and also under Finance Act, 2015 and 2016.

7.6 It is humbly submitted that in Section 5 of the Finance Act, 2015 it is clearly written that

(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."

Further in Section 5 of the Finance Act, 2016 also it is clearly written that-

(5) The provisions of Chapter V of the Finance Act, 1994 (32 of 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 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.

7.7 thus, the legal provisions under Service Tax law have been extended to Swachch Bharat Cess. This is a common practice in drafting statute, whereby the provisions of an existing enactment are incorporated in a later statute. A well settled legal proposition on such incorporation is referred below:-

"If a subsequent Act brings into itself by reference some of the clauses of a former Act, the legal effect of that, as has often been held, is to write those sections into the new Act just as if they had been actually written in it with the pen or printed in it, and, the moment you have those clauses in the later Act, you have no occasion to refer to the former Act at all."

(Per Lord Esher, M.R. in In/re Wood's Estate (1886) 31 Ch. D. 607/615).

7.7.1 from the above discussions it may please be seen that the provisions of refunds shall also apply as they apply in relation to the levy and collection of Tax on taxable services under Chapter V

of the Finance Act, 1994 and accordingly there may not be any different approach one while applying the above provisions for levy and collection and the other while granting refunds, which included rebate.

7.8. Applicant had mentioned in the application that claimant in the instant case had relied upon the case law of TVS Motor Co.Ltd. [2015-TIOL-1478-HC-KAR and Shree Renuka sugar Ltd,.[2014-98-HC-KAR-CX] and that both the cases are not in context of SBC or KKC. In this context it is submitted that application ought to have been restricted to the findings of the Commissioner (Appeals). However, it is also submitted that as appeal have been filed against the above two orders, it is also a fact that the case cited by the applicant i.e. [2011(263) ELT 34(Guj.)] was also distinguished by Rajasthan High Court in 2017(345) ELT 17(Raj.).

7.9. In view of the above facts and submission, the revision application filed by the applicant may kindly be rejected and rebate/relund of SBC and KKC may kindly be allowed.

8. The applicant vide letter F.No. V/2-26/OIA/RRA/2017-18 dated 15.02.2018 informed this office that

"a common issue involved in all the 16 Revision Applications is relating to entitlement of refund of quantum of SBC and KKC, while considering the claims for rebate/refund of Central Excise duty under Notification No. 41/2012-ST, dtd.29.06.2012. The issue involved in all the aforesaid Application is substantial as well as of recurring nature. There are many cases, where OIO rejecting the refund of SBC and KKC have been remanded back by the Commissioner (Appeals) for reconsideration, which are awaiting reconsideration by the adjudicating authority and many appeals on the same issue filed by the claimant are also pending before the Commissioner (Appeals). Recently, in some of the appeals, the OIAs have also been issued with the same findings. Hence, to resolve all these matters with a consistent approach, final decision from the Central Government on the aforesaid 16 Revision Applications is utmost necessary, for which it is requested to take up the aforesaid 16 RAs for urgent consideration from your office and required orders passed thereon may please be provided to this office please".

9. Government observed that the applicant has sought an early hearing of the Revision Applications on the grounds mentioned in their aforestated letter.

The prayer was not opposed. In view of the facts mentioned in early hearing letter, the prayer for early hearing of the revision applications by the applicant was accepted and the matter was fixed for hearing on 28.03.2018 and taken up for disposal on the same day.

10. A personal hearing in the case was held on 28.03.2018. Shri Rakesh Bihari, Assistant Commissioner, CGST, Gandhidham, appeared for hearing on behalf of the applicant. Shri R.C. Prasad, Consultant appeared on behalf of the respondent. The applicant reiterated the submissions filed in 16 Revision Applications and pleaded that in view of the same Orders in Appeal be set aside and Revision Applications be allowed. On the other hand the respondent reiterated the Order of Commissioner (Appeals) and cross objections filed and pleaded that 16 Revision Applications be dismissed and Orders in Appeal be upheld.

11. Government has carefully gone through the relevant case records available in case files, oral & written submissions and perused the impugned Orders-in-Original and Orders-in-Appeal. Since the issue involved in all the sixteen applications is identical, these sixteen applications are being taken up for adjudication together in this order.

12. The issue to be decided in the present case is as to whether the applicant is entitled for rebate of SBC and KKC paid on services used for export of goods under Notification 41/2012-ST dated 29.06.2012 or not.

13. The government of India vide Chapter VI (Section 119) of the Finance Act, 2015 introduced a new levy called Swachh Bharath Cess. In this context, the relevant Chapter of the Finance Act, 2015 is reproduced below:-

"CHAPTER VI

SWACHH BHARAT CESS

119. (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, 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."

14. Similarly, The government of India vide Chapter VI (Section 161) of the Finance Act, 2016 introduced a new levy called Krishi Kalyan Cess. In this context, the relevant Chapter of the Finance Act, 2016 is reproduced below:

161 . (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 theKrishi 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-e 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 1994), 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 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 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.

15. From the above, Government observes 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. Similarly, Section 161 of Finance Act, 2016 levied KKC on taxable services and Section 161(2) specifies KKC as Service Tax. A plain reading of the para 5 of Section 119 of Chapter VI of the Finance Act, 2015 and para 5 of Section 161 of Chapter VI of the Finance Act, 2016, wherein it is mentioned that *"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/ Krishi Kalyan 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" and h*ence it is very clear that "SBC" and "KKC" are available as refund to the eligible claimants.

16. Government observes that the Rule 6A of Service Tax Rules, 1994 provides the conditions when service to be treated as export of service. Further, it provides that refund shall be provided where the services are exported as per the conditions and limitations provided under the notification issued by the government. Therefore, government has issued the notification 39/2012-ST dated 20.06.2012 for the grant of refund in case services are exported as per Rule 6A of the service Tax Rule, 1994. Government also observes that Notification No. 03/2016-ST dated 03.02.2016 has amended Notification No. 39/2012-ST dated 20.06.2012 which grants rebate of service tax paid on input services used for export of services. Vide said Notification, the following clause (d) has been added to the definition of "Service Tax and Cess":

"(d) Swachh Bharat Cess as levied under sub-section (2) of Section 119 of the Finance Act, 2015 (20 of 2015)"

17. Similarly, Government observes that vide Notification number 19/2016 Service Tax dated 26/05/2016 notification number 39/2012-ST has been

amended and it provides that refund of KKC shall be allowed, if services are exported under rule 6A of the Service Tax Rules, 1994. Vide said Notification, the following clause (e) has been added to the definition of "Service Tax and Cess":

> *"(e) Krishi Kalyan Cess as levied under sub-section (2) of section 161 of the Finance Act, 2016 (28 of 2016)."*

18. Government observes that this amendment itself displays the very intention of granting rebate of Swachh Bharat Cess. The reasons for such amendment is that, in the original notification No.39/2012-ST dated 20.06.2012 there was an explanation regarding as to what 'Service Tax and Cess' means

> Explanation 1. - For the purposes of this notification "service tax and cess" means,-
>
> (a) service tax leviable under section 66 or section 66B of the Finance Act, 1994 (32 of 1994);
>
> (b) education cess on taxable service levied under section 91 read with section 95 of the Finance (No.2) Act, 2004 (23 of 2004); and
>
> (c) Secondary and Higher Education Cess on taxable services levied under section 136 read with section 140 of the Finance Act, 2007 (22 of 2007).

19. Government further observes that the words used in the explanation was 'service tax leviable under section 66 or section 66B of the Finance Act, 1994 (32 of 1994)' and by use of phrase 'under section 66 or section 66B' there was no clarity regarding granting rebate of Swachh Bharat Cess and later on of Krishi Kalyan Cess as both these Cesses were collected as 'Service Tax' by virtue of Section 2 of Finance Act, 2015 (under section 119 of the said Act) and Finance Act, 2016 (under section 161 of the said Act) respectively and not under Section 66 or 66B of the Finance Act,1994. Thus, the amendments were done in notification 39/2012-ST dated 20.06.2012, so as to grant rebate of amount of Swachh Bharat cess and Krishi Kalyan Cess as was intended. The very amendment shows the intention of the Government to allow rebate of entire Service Tax as taxes are not intended to be exported.

20. Government also observes that it is the policy of the Government of India to export the goods and/or services and not the taxes out of India. Thus, exports will become cheaper making Indian products or services more competitive in the international markets.

Hon'ble CESTAT, West Zonal Bench, Mumbai, in Infosys Technologies Ltd. Vs Commissioner of Central Excise Pune–I [2017 (47) S.T.R. 24 (Tri. - Mumbai)] while allowing refund claim of taxable services availed to an exporting unit under Rule 5 of Cenvat Credit Rules, 2004, vide Final Order Nos. A/89227-89228/2016-WZB/STB, dated 17-8-2016 in Appeal Nos. ST/121-122/2009-Mum have elucidated the intention of legislation which ensures that duty is not levied on export goods or on inputs used in manufacture of goods, in the following lucid manner:

> 6. *That taxes are not exported is almost axiomatic. Not only do they distort the international marketplace but such loading of taxes on price is inconsistent with the underlying principles of taxation. Taxes, being essentially a source of public finance, are a national phenomenon and a national characteristic that does not spill over the frontiers of a nation. It is the most visible and rampant manifestation of sovereignty and, for that very reason, is restricted to the domestic jurisdiction of the government concerned. To tax the denizens of another State shall surely sow seeds of international discord - almost akin to declaration of war - and is, therefore, abhorrent. It is also impossible to enforce. Even a tax on exports, as an instrument of disincentive, is borne by the entity in the taxing jurisdiction being the intended object of the tax measure. Tax embedded in exported products or services lacks even that saving grace - by taxing the recipient in another jurisdiction or the incongruity of placing the tax burden on the supplier who is not the intended object of the tax either. Hence, all tax systems provide the wherewithal for neutralizing the tax incidence on exported commodities and, invariably, implement that principle through the taxing statute. Both Central Excise Act, 1944 and Customs Act, 1962 do so. The present dispute, therefore, is attributable either to a lack of clarity in the Finance Act, 1994 or the unwillingness of tax administrators to acknowledge the existence of the wherewithal. Whichever that be, it devolves on us to eliminate the impediment.*

Hon'ble CESTAT, West Zonal Bench, Mumbai in Hindustan Platinum Vs CCE- M-IV [2017 (352) E.L.T. 105 (Tri. - Mumbai)] while allowing the appeal filed by an exporter allowing refund which was sought to be recovered under Rule 18 of Central Excise Rules, 2002 under the pretext that the goods under export were exempted goods and hence not eligible for rebate of duties paid also observed as under :-

> 8. *It is the stated doctrine in tax administration that domestic taxes are not exported with goods. Legislation carves out special provisions in taxing statutes for ensuring that such anathema is eliminated. The failure on the part of the lower authorities to perceive the intent of provision of Rule 18 of Central Excise Rules, 2002, by digressing to the issue of payment of duty without the legal compulsion to do, appears to*

have blindsided them into suspicion of the motives for payment of such duty to the exclusion of the larger issue, viz., burdening the export value with domestic taxes.

21. Government further observes that in the notification no.41/2012-ST dated 29.06.2012, under which rebate claim has been filed, there was no such qualification i.e. 'leviable under Section 66 or 66B' and the words used were 'rebate of Service Tax paid', which obviously included Service Tax paid under Section 66 or 66B of the Finance Act,1994 as well as levied and collected under Section 2 of Finance Act, 2015 and Finance Act, 2016. As a result no such amendment was required to be made in notification 41/2012-ST dated 20.06.2012.

22. Government also observes that both SBC and KKC have been levied as service Tax only as has been stated in Section 119(2) of the Finance Act, 2015 and Section 161(2) of the Finance Act, 2016. Moreover, both SBC/KKC are levied on the "Value of Taxable Services" and not on the "Service Tax" component unlike the general character of any Cess and thus it is apparent that SBC and KKC though called Cess but have been given the status of service tax which is also evident from Section 119(2) and Section 119(5) of the Finance Act 2015 and Section 161(2) & 161 (5) of Finance Act, 2016 respectively.

23. Government also observes that Notification No.39/2012-ST dated 20.12.2012 granting rebate of service tax paid on services used in providing export of services has been amended vide notification No.3/2016-ST dated 03.02.2016 and Notification No. 29/2016-ST dated 26.05.2016, so as to allow refund of SBC & KKC. Also 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 26.005.2016, 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 already explained at para 20 supra. Government further observes that Notification No. 41/2012-ST dated 29.06.2012 has been issued under Section 93 A of the Act which gives Central Government power to grant rebate of service tax paid on the taxable services used for export of goods by an exporter.

24. Government finds it pertinent to note the rebate/ refund provisions stated under Finance Act 1994.

Extract of Section 93A of Finance Act 1994 as amended is reproduced below:

"**93A. Power to grant Rebate –** Where any goods or services are exported, the Central Government may grant rebate of service tax paid on taxable services which are used as input services for the manufacturing or processing "for removal or export of such goods" or for providing any taxable services and such rebate shall be subject to such extent and manner as may be prescribed: Provided that where any rebate has been allowed on any goods or services under this section and the sale proceeds in respect of such goods or consideration in respect of such services are not received by or on behalf of the exporter in India within the time allowed by the Reverse Bank of India under section 8 of the Foreign Exchange Management Act, 1999 (42 of 1999), such rebates shall [except under such circumstances or conditions as may be prescribed,] be deemed never to have been allowed and the Central Government may recover or adjust the amount of such rebate in such manner as may be prescribed"

25. Government further observes that Notification 41/2012 - Service Tax dated 29th June 2012 clearly prescribes the mode through which refund on service tax paid on input services used for export of goods should be applied. This section 93A of the Finance Act, 1994 together with the above said notification deals with refund of service tax paid on input services and never deals with refund of CENVAT credit i.e. service tax paid on services availed beyond the place of removal which never qualify as CENVAT credit can be applied for refund if the same is used for the purpose of Export. Government further observes that the contention of the department that "*Cenvat credit of SBC paid on input services is not allowed and that what is not allowed under Cenvat Credit route is generally not allowed under refund or exemption*" also gets vitiated by the fact that rebate of Swachh Bharat Cess is being allowed under notification no.39/2012-ST dated 20.06.2012 as amended by notification no.3/2016-ST dated 03.02.2016 and exemption by way of refund of service tax paid on the specified services by notification no.12/2013-ST dated 01.07.2013 as amended by notification no.2/2016-ST dated 03.02.2016. Further, it is rightly contended by the respondent that Cenvat Credit Scheme and Refund /Rebate or granting exemption are independent of each other and not co-related.

26. As already discussed in preceding paras, both SBC and KKC have been treated as Service Tax and hence Government holds that the rebate of SBC and KKC is allowable under Notification No.41/2012-ST dated 29.06.2012. Government also observes that the policy of the Government is not to export the taxes and disallowance of refund of SBC and KKC would interpret that the

intention of the legislation is to export taxes. Government holds that it is a 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. The provisions of the laws have to be applied harmoniously and constructively to not to defeat the purpose of the other.

27. As regards deduction of Refund of SBC and KKC amounting to Rs.1,16,322/- which was already sanctioned and disbursed to the applicant under previous orders without issuance of show cause notice for recovery of erroneous refunds under Section 73(1) of the Act, Government is in full agreement with the findings of the Commissioner (Appeals) that *"refund amount held admissible to the applicant, cannot be adjusted subsequently without undergoing the process of adjudication and therefore, the order in Original No.ST/513/2016-17 dated 29.12.2016 deducting refund of SBC & KKC of Rs.1,16,332/- sanctioned under previous orders, is not correct, legal and proper."*

28. In view of position explained above, Government do not find any infirmity in the impugned Orders-in-Appeal and therefore uphold the same.

29. The impugned 16 revision applications are accordingly dismissed.

30. So, ordered.

True Copy Attested

10-4-18
एस. आर. हिरूलकर
S. R. HIRULKAR
A-C

05.4.2018
(ASHOK KUMAR MEHTA)
Principal Commissioner & Ex-Officio
Additional Secretary to Government of India.

ORDER No.114-129/2018-CX (WZ)/ASRA/Mumbai DATED 05th April., 2018.

To,
The Assistant Commissioner of CGST Gandhidham Urban Division,
Plot No. 82, Sector 8, Opposite Ram Leela Maidan,
Gandhidham -370201

Copy to:

1. Commissioner of Goods and Service Tax, Kutch (Gandhidham). Sector 8, Opposite Ram Leela Maidan, Gandhidham -370201.
2. Commissioner (Appeals), GST & Central Excise, 2nd Floor, GST Bhavan, Race Course Ring Road, Rajkot, 360 001.
3. M/s SRK Chemicals Limited, Neelkanth, BBZ-S-60 Zanda Chouk, Gandhidham (Kutch), 370201.
4. Sr. P.S. to AS (RA), Mumbai.
5. Guard File.
6. Spare Copy.