

**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE
TRIBUNAL, KOLKATA**

EASTERN ZONAL BENCH : KOLKATA

REGIONAL BENCH - COURT NO.1

Service Tax Appeal No.76346 of 2019

(Arising out of Order-in-Appeal No.09/ST/BBSR-GST/2019 dated 27.02.2019 passed by Commissioner(Appeals), GST, Central Excise & Customs, Bhubaneswar.)

M/s. MMTC Limited

(Alok Bharati Complex, 7th Floor, Sahid Nagar, Bhubaneswar-751007, Odisha.)

...Appellant

VERSUS

Commissioner of CGST & CX, Bhubaneswar Commissionerate

.....Respondent

(C.R. Building, Rajaswa Vihar, Bhubaneswar-751007.)

WITH

(i) Service Tax Appeal No.76514 of 2019 (M/s. MMTC Limited Vs. Commissioner of CGST & CX, Bhubaneswar Commissionerate); (ii) Service Tax Appeal No.76681 of 2019 (M/s. MMTC Limited Vs. Commissioner of CGST & CX, Bhubaneswar Commissionerate); (iii) Service Tax Appeal No.76682 of 2019 (M/s. MMTC Limited Vs. Commissioner of CGST & CX, Bhubaneswar Commissionerate); (iv) Service Tax Appeal No.76684 of 2019 (M/s. MMTC Limited Vs. Commissioner of CGST & CX, Bhubaneswar Commissionerate); (v) Service Tax Appeal No.76685 of 2019 (M/s. MMTC Limited Vs. Commissioner of CGST & CX, Bhubaneswar Commissionerate); (vi) Service Tax Appeal No.75447 of 2020 (M/s. MMTC Limited Vs. Commissioner of CGST & CX, Bhubaneswar Commissionerate); (vii) Service Tax Appeal No.75448 of 2020 (M/s. MMTC Limited Vs. Commissioner of CGST & CX, Bhubaneswar Commissionerate); (viii) Service Tax Appeal No.75450 of 2020 (M/s. MMTC Limited Vs. Commissioner of CGST & CX, Bhubaneswar Commissionerate); (ix) Service Tax Appeal No.75452 of 2020 (M/s. MMTC Limited Vs. Commissioner of CGST & CX, Bhubaneswar Commissionerate);

(i) (Arising out of Order-in-Appeal No.19-20/ST/BBSR-GST/2019 dated 27.03.2019 passed by Commissioner(Appeals), GST, Central Excise & Customs, Bhubaneswar.)

(ii) (Arising out of Order-in-Appeal No.24/ST/BBSR-GST/2019 dated 26.04.2019 passed by Commissioner(Appeals), GST, Central Excise & Customs, Bhubaneswar.)

(iii) (Arising out of Order-in-Appeal No.25/ST/BBSR-GST/2019 dated 26.04.2019 passed by Commissioner(Appeals), GST, Central Excise & Customs, Bhubaneswar.)

***Service Tax Appeal Nos.76346, 76514, 76681, 76682, 76684, 76685 of 2019 AND
Service Tax Appeal Nos.75447, 75448, 75450 & 75452 of 2020***

- (iv) (Arising out of Order-in-Appeal No.26/ST/BBSR-GST/2019 dated 26.04.2019 passed by Commissioner(Appeals), GST, Central Excise & Customs, Bhubaneswar.)
- (v) (Arising out of Order-in-Appeal No.23/ST/BBSR-GST/2019 dated 26.04.2019 passed by Commissioner(Appeals), GST, Central Excise & Customs, Bhubaneswar.)
- (vi) (Arising out of Order-in-Appeal No.01-04/ST/BBSR-GST/2020 dated 27.07.2020 passed by Commissioner(Appeals), GST, Central Excise & Customs, Bhubaneswar.)
- (vii) (Arising out of Order-in-Appeal No.01-04/ST/BBSR-GST/2020 dated 27.07.2020 passed by Commissioner(Appeals), GST, Central Excise & Customs, Bhubaneswar.)
- (viii) (Arising out of Order-in-Appeal No.01-04/ST/BBSR-GST/2020 dated 27.07.2020 passed by Commissioner(Appeals), GST, Central Excise & Customs, Bhubaneswar.)
- (ix) (Arising out of Order-in-Appeal No.01-04/ST/BBSR-GST/2020 dated 27.07.2020 passed by Commissioner(Appeals), GST, Central Excise & Customs, Bhubaneswar.)

APPEARANCE

Shri A.D.Roy & Ms. Sanjukta Roy, both Advocates for the Appellant (s)
Shri S.S.Chattopadhyay, Authorized Representative for the Revenue

**CORAM: HON'BLE SHRI ASHOK JINDAL, MEMBER(JUDICIAL)
HON'BLE SHRI K. ANPAZHAKAN, MEMBER(TECHNICAL)**

FINAL ORDER NO. 77322-77331/2023

DATE OF HEARING : 22 September 2023
DATE OF DECISION : 17, Oct. 2023.

Per : ASHOK JINDAL :

All the appeals are having common issue, therefore, all the decided by a common order.

2. The facts of the case are that the appellant is a Merchant Exporter & holder of Service Tax Registration and Import Export Code for providing the export services. The appellant has applied rebate/refund claim for export of Basic Grade Pig Iron to Rayang/Thailand under cover of Shipping Bill and export of Non-Alloy Pig Iron from Paradeep Port in terms of Notification No.41/2012-ST dated 29.06.2012. The refund claims were verified and revealed that the rebate/refund claims includes refund of Swachh Bharat Cess (SBC) and Krishi Kalyan Cess (KKC) as well in addition to Service Tax levied under section 66B of the Finance Act, 1994. Therefore, the adjudicating authority sanctioned the refund claim of Service Tax paid by the

appellant, but rejected the rebate/refund claim of SBC & KKC holding that the same is not admissible in as much as there is no specific provision in the subject Notification No.41/2012-ST dated 29.06.2012 for granting refund of the said SBC & KKC. Against the said rejection of refund claim, the appellant is before us.

3. The Ld.Counsel for the appellant appeared before us and submits that the appellant filed the refund claim of the services used in export of goods and for the service tax paid in the course of export of goods, they are entitled for refund of service tax as well as SBC & KKC paid in terms of Notification No.41/2012-ST dated 29.06.2012. Therefore, refund claim cannot be denied.

4. It is his submission that section 119 of the Finance act, 2015 introduced the provision of collection of SBC. As per the said provision which relates to refund on exemption from tax, interest and imposition of penalty shall be as far as may be applied in relation to levy and collection of SBC on taxable services under Chapter V of the Finance Act, 1994 or the Rules made thereunder, as the case may be and as per Section 161 of Finance Act, 2016 the same provision was brought in as KKC.

5. It is his submission that the SBC & KKC are to be collected by the provider as Service Tax and it is further submitted that during 2016-17 various services were used by the appellant for export of goods and paid Service Tax thereon and thereafter claimed refund of tax under Notification No.41/2012-ST dated 29.06.2012. While claiming refund of Service Tax, SBC as well as KKC was also included in the refund since they were paid as Service Tax in terms of the law. But, the department failed to refund the SBC and KKC on the plea that nothing specific has been stated in the Notification about SBC and KKC to be refunded without disputing that the they are paid as Service Tax under the statute.

6. It is his submission that under section 119 of the Finance Act, 2015 and section 161 of the Finance Act, 2016 SBC and KKC respectively are levied as Service Tax and levy of these two taxes were

governed by Chapter V of the Finance Act, 1994 which shall apply to them amongst other things in respect of refund like Service Tax under Chapter V of the Finance Act, 1994. He further submitted that the authorities erred in law while rejecting the SBC and KKC portion of the Service Tax that the Legislative intent while promulgating or enacting the Notification No.41/2012-ST was to reduce the tax burden on the export goods so that they can be sold in the international market at a much more competitive price so that the same can be easily sold and India can earn more foreign exchange and improve its economic position in the world market. Therefore, if SBC and KKC are not refunded as service tax simply because it has not been separately mentioned and it continues to be added to the international price of the goods then the very legislative intent would be defeated. It is his submission that the authorities below have failed to appreciate that the Notification is enacted under powers granted under Section 93A of the Chapter V of the Finance Act, 1994, which is granting rebate of Service Tax. Therefore, SBC and KKC portion of Service Tax is not refunded as rebate then it will go against the statutory mandate which the respondents as creature of the very same statute one cannot be allowed to do.

7. It is his submission that last but not the least in a taxing statute there is no place for intendment that since SBC and KKC are not separately mentioned, the intention was not to refund them. Rather in a taxing statute one has to look at the clear words used therein. Hence, Service tax is said to be refunded as rebate under Section 93A then all that is levied as Service Tax has to be refunded whether the same is later added and/or levied as service tax or not. He also relied on the decision of the Hon'ble Apex Court in the case of Government of Keala And Another Vs. Mother Superior Adoration Convent [(2021) 5 Supreme Court Cases 602].

8. On the other hand, the Ld.AR for the department submitted that the issue has been settled by the decision of Hon'ble Apex Court in the case of Unicorn Industries v. Union of India [2019 (370) E.L.T. 3

(S.C.)], wherein it has been held that when a particular kind of duty is exempted, other types of duty or cess imposed by different legislation for different purpose cannot be said to have been exempted, therefore, the appellant is not entitled for refund of SBC and KKC.

9. Heard the parties, considered the submissions.

10. The revenue has heavily relied on the decision of the Hon'ble Apex Court in the case of Unicorn Industries v. Union of India (supra). In the said case, the issue before the Hon'ble Apex Court is with regard to refund of National Calamity Contingent Duty, Education Cess and Higher Education Cess and the refund were to be entertained in terms of Notification No.71/2003-CE dated 09.09.2003. The said Notification grants Area Based Exemption for North-Eastern States and the said exemption does not deal the situation of export of goods, whereas Notification No.41/2012-CE dated 29.06.2012 deals with a situation where the assessee is entitled to claim the refund of duty and Service Tax on export of goods on inputs/service received by the appellant for export of goods is entitled for refund. Therefore, the said decision is not applicable to the facts of the present case.

11. Now dealing with the case in hand, we find that Notification No.41/2012-ST is clearly stating grant of refund of service tax paid on services used for export of goods and sub-section (2) of section 119 of 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, 2015, and sub-section (5) of the section 161 of the Finance Act, 2016 also stipulate that all provisions relates to refund of service tax under Finance Act, 1994 shall be applicable to refund of SBC & KKC. Therefore, we find that the said provisions were not taken into consideration by the authorities below.

12. Further, we find it relevant to refer to Notification No.41/2012-ST dated 29.06.2012 which allows refund of Service Tax, relevant para of which 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 :-

13. In view of above, we find that Notification No.41/2012-ST dated 29.06.2012 grants refund of service tax paid on the taxable services received by an exporter of goods and used for export of goods.

14. We 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 rate notified by the Central Government. We would like to reproduce Chapter VI inserted vide Section 119 of the Finance Act, 2015, which is as under:-

Chapter VI

Swachh Bharat Cess

119. Swachh Bharat Cess. —

(1) This Chapter shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

(2) There shall be levied and collected in accordance with the provisions of this Chapter, a cess to be called the Swachh Bharat Cess, as service tax on all or any of the taxable services at the rate of two per cent. on the value of such services for the purposes of financing

and promoting Swachh Bharat initiatives or for any other purpose relating thereto.

(3) The Swachh Bharat Cess leviable under sub-section (2) shall be in addition to any cess or service tax leviable on such taxable services under Chapter V of the Finance Act, 1994 (32 of 1994), or under any other law for the time being in force.

(4) The proceeds of the Swachh Bharat Cess levied under sub-section (2) shall first be credited to the Consolidated Fund of India and the Central Government may, after due appropriation made by Parliament by law in this behalf, utilise such sums of money of the Swachh Bharat Cess for such purposes specified in sub-section (2), as it may consider necessary.

(5) The provisions of Chapter V of the Finance Act, 1994 and the rules made thereunder, including those relating to refunds and exemptions from tax, interest and imposition of penalty shall, as far as may be, apply in relation to the levy and collection of the Swachh Bharat Cess on taxable services, as they apply in relation to the levy and collection of tax on such taxable services under Chapter V of the Finance Act, 1994 or the rules made thereunder, as the case may be.

15. We further 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. We would like to reproduce Chapter VI inserted vide Section 161 of the Finance Act, 2016, which is as under:-

CHAPTER VI KRISHI KALYAN CESS

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.

16. We 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 16 (5) specifies that the provisions of refund of Service Tax under Finance Act, 1994 shall apply to refund of KKC.

17. We 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.

18. 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, we are 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.

19. In view of discussions held above, we 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 the Finance Act, 2015 and Section 16(2) & 161(5) of the Finance Act, 2016 respectively.

20. We 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(2) 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 cannot be interpreted in such a way to make other provisions of law meaningless or to reverse the intention of the legislation.

21. We 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 discussed above, the rebate of SBC & KKC is allowable under the above Notification.

22. We 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:-

23. 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 (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).

24. 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.

25. 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 29.06.2016 has allowed refund of service tax without specifying whether leviable under Section 66 or Section 66B of the Finance Act, 1994 and hence, no amendment in Notification No.41/2012-ST was/is legally required to be undertaken.

26. The Ld.Commissioner(Appeals) decided similar appeals vide OIA No.KCH-EXCUS-000-APP-114 to 121-2017-18 dated 05.12.2017 & OIA No.KCH-EXCUS-000-APP-128 to 135-2017-18 dated 05.12.2017 which were appealed against by the Department before the Additional Secretary (RA), Government of India, Mumbai, who has also upheld the Orders-in-Appeal and rejected Departmental Appeals.

27. In view of the above factual & legal position, we set aside the impugned orders and allow all the appeals with consequential relief, if any.

(Order pronounced in the open court on 17.10.2023.)

Sd/
(ASHOK JINDAL)
MEMBER (JUDICIAL)

Sd/
(K. ANPAZHAKAN)
MEMBER (TECHNICAL)