

MAHARASHTRA AUTHORITY FOR ADVANCE RULING

(constituted under section 96 of the Maharashtra Goods and Services Tax Act, 2017)

BEFORE THE BENCH OF

- (1) **Shri B. V. Borhade, Joint Commissioner of State Tax**
(2) **Shri Pankaj Kumar, Joint Commissioner of Central Tax**

GSTIN Number, if any/ User-id	27AAACG1376N2ZB
Legal Name of Applicant	KANSAI NEROLAC PAINTS LIMITED
Registered Address/Address provided while obtaining user id	NEROLAC HOUSE, GANPATRAO KADAM MARG, LOWER PAREL, Mumbai City, Maharashtra, 400013
Details of application	GST-ARA, Application No. 18 Dated 06.01.2018
Concerned officer	D.C. GST, LTU 4, Mumbai
Nature of activity(s) (proposed / present) in respect of which advance ruling sought	
A Category	Input Service Distributor (ISD)
B Description (in brief)	As reproduced in para 02 of the Proceedings below.
Issue/s on which advance ruling required	(iv) admissibility of input tax credit of tax paid or deemed to have been paid
Question(s) on which advance ruling is required	As reproduced in para 01 of the Proceedings below.

PROCEEDINGS

(under section 98 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017)

The present application has been filed under section 97 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017 [hereinafter referred to as "the CGST Act and MGST Act"] by KANSAI NEROLAC PAINTS LIMITED, the applicant, seeking an advance ruling in respect of the following question :

Whether accumulated credit by way of Krishi Kalyan Cess (KKC) as appeared in the Service tax return of Input Service Distributor (ISD) ON June 30, 2017 which is carried forward in the electronic credit ledger maintained by the company under CGST Act 2017, will be considered as admissible input tax-credit?

At the outset, we would like to make it clear that the provisions of both the CGST Act and the MGST Act are the same except for certain provisions. Therefore, unless a mention is specifically made to such dissimilar provisions, a reference to the CGST Act would also mean a reference to the same provision under the MGST Act. Further to the earlier, henceforth for the purposes of this Advance Ruling, a reference to such a similar provision under the CGST Act / MGST Act would be mentioned as being under the "GST Act".

02. FACTS AND CONTENTION - AS PER THE APPLICANT

The submissions, as reproduced verbatim, could be seen thus-

Description (in brief)	M/s Kansai Nerolac Paints Limited (hereinafter referred as company) holder of registration number STC no. AAACG1376NST001 is engaged in business of manufacture of paints and engaged in provision of works contract service as well. The works contract services are carried out from the company's Head Office. Under chapter V of Finance Act 1994, the Company has a centralized
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	<p>registration for Head Office, factories and depots at its Head Office (HO) in Mumbai. Apart from centralized registration, the Company also has a separate registration as Input Service Distributor (ISD) for its HO to distribute the eligible CENVAT credit to its factories and Head Office according to Rule 2(m) of Cenvat Credit Rules 2004 (herein after referred as CCR), read with Rule 7 and Rule 7A of CCR.</p> <p>Rule 9(10) of the CCR requires the input service distributor to file the half yearly return in the statement giving the detail of the credit received and distributed during the said half yearly period by the end of the following months.</p> <p>As an input service distributor, the company received CENVAT credit at head office. Those CENVAT credit also included Krishi Kalyan Cess (KKC) as well but the company could not distribute KKC to its factories as because, KKC credit could be utilized only with KKC liability as prescribed under CCR, and recipient entities being manufacturing units did not have any KKC liability to set off KKC credit. As a result of which there was accumulation of KKC credit in the return service tax ISD return, filed under Rule 9(10) of CCR.</p> <p>In view of provision of sec 140(1) of CGST Act 2017 read with Rule 117(1) of CGST Rules 2017, the company had carried forward aforesaid accumulated KKC as appeared in the ISD return on June 30, 2017 to electronic credit register maintained under CGST ACT 2017 but not utilized.</p>
Statement of relevant facts having a bearing on the question(s) raised.	<p>1.1 Kansai Nerolac Paints Ltd (herein after referred as the Company or Nerolac) is registered under Central Goods and Service Tax Act, as taxable person, engaged in supply of goods and supply of service. Company is also registered in some identified States/Union Territories as taxable person under the respective State/Union Territory Goods and Service Tax Act 2017.</p> <p>1.2 During pre GST regime, that is prior to July 1, 2017, company was engaged in manufacture and sale of goods across the states and in the state of Maharashtra Company was engaged in works contract service as well. Accordingly under chapter V of Finance Act 1994, company took centralized registration for its Head Office located (HO) in the state of Maharashtra. Apart from centralized registration, company also obtained registration as Input Service Distributor (ISD) for its HO to distribute eligible credit to its respective manufacturing units according to Rule 2(m) of Cenvat Credit Rules 2004 (herein after referred as CCR), read with Rule 7 and Rule 7A of CCR.</p> <p>1.3 CBEC had vide Circular No. 97 dated 23.8.2007 clarified that input service distributor is an office or premises of the manufacturer or taxable service provider which receives bills/invoices etc., of input services. The input service distributor can distribute the eligible credit to any unit of the manufacturer or any premises/office of taxable service provider.</p> <p>1.4 Rule 9(10) of the CCR requires the input service distributor to file the half yearly return in the statement giving the detail of the credit received and distributed during the said half yearly period by the end of the following months.</p> <p>1.5 As an input service distributor, company received cenvat credit at its head office. Those Cenvat credit includes Krishi Kalyan Cess (KKC) as well but the company could not distribute KKC to its manufacturing units as because, KKC credit could be utilized only with KKC liability as prescribed under CCR, and recipient entities being manufacturing units did not have any KKC liability to set off KKC credit. As a result of which there was accumulation of KKC credit in the return, filed under Rule 9(10) of CCR.</p> <p>1.6 In view of provision of sec 140(1) of CGST Act 2017 read with Rule 117(1) of CGST Rules 2017, company has carried forward the aforesaid accumulated KKC as appeared in the ISD return on June 30, 2017 to electronic credit register maintained under CGST ACT 2017.</p>
Statement containing the applicant's interpretation of law and/or facts, as the case may be, in respect of the aforesaid question(s) (i.e. applicant's view point and submissions on issues on which the advance ruling is sought).	<p>1.1 KKC is levied as per sec 161 of the Finance Act 2016</p> <p>1.2 Sec 161(5) of the Finance Act specified that for levy and collection of KKC, Chapter V of Finance Act 1994 (Service Tax) will be applicable.</p> <p>1.3 Entry 92C of Union List I of Indian Constitution empowers legislature to levy service tax as provided under Chapter V of Finance Act 1994.</p> <p>1.4 122nd amendment of Constitution deletes Entry 92C of Union List I, in view of implementation of Goods and Service Tax.</p> <p>1.5 It implies KKC is also subsumed in Goods and Service Tax along with service tax. In other words CGST liability under CGST Act 2017 contains liability on account of KKC as well.</p> <p>1.6 Rule 3(1a) of CCR includes KKC as cenvat credit.</p> <p>1.7 Sec 140(1) allows a registered person to carry forward the CENVAT credit in return to electronic credit ledger provided the said credit is admissible under CGST Act 2017.</p> <p>1.8 As discussed in para 1.5 above, CGST liability represent KKC liability as well therefore KKC credit will also be considered as admissible CENVAT credit as per proviso (1) to sec 140(1) of the CGST Act.</p>

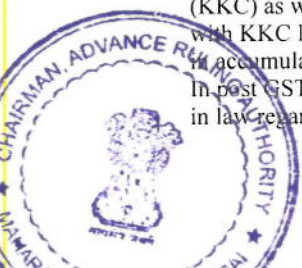
Submission dt.06.02.2018 on acceptance of application for Advance Ruling

"....., we like to bring it to your kind attention that we Kansai Nerloac Paints (herein after referred as the Company) is registered under Central Goods and Service Tax Act, as taxable person, engaged in supply of goods and supply of service.

During pre GST regime, that is prior to July 1,2017, company was engaged in manufacture and sale of goods across the states. Company obtained registration as Input Service Distributor (ISD) for its Head Office located in Mumbai to distribute eligible credit to its respective manufacturing units.

As an input service distributor, company received cenvat credit at its head office. Those cenvat credit includes Krishi Kalyan Cess (KKC) as well but the company could not distribute KKC to its manufacturing units as because KKC credit could be utilised only with KKC liability and recipient entity being manufacturing entity did not have any KKC liability to set off KKC credit, resulting accumulation of KKC credit.

In post GST regime neither there is any specific restriction in law regarding admissibility of KKC nor there any specific provision in law regarding admissibility of KKC as input tax credit.



In view of the aforesaid facts, our question regarding admissibility of input tax credit is duly covered under clause (d) of section (2) of section 97 of CGST/MGST Act 2017 and thus the said question is duly covered under the provision of Advance Ruling as provided under CGST/MGST Act 2017.

Submission of NIL date

2. Legislative provisions.

2.1 Sec 161 of Finance Act 2016 read with Chapter VI of Finance Act 2016:

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 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, 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 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)

2.2 Deletion of entry 92C vide constitution 122 nd amendment

"17. In the Seventh Schedule to the Constitution. —(a) in List I — Union List, —(i) for entry 84, the following entry shall be substituted, namely:— "84. Duties of excise on the following goods manufactured or produced in India, namely:— (a) petroleum crude; (b) high speed diesel; (c) motor spirit (commonly known as petrol); (d) natural gas; (e) aviation turbine fuel; and (f) tobacco and tobacco products."; (ii) entries 92 and 92C shall be omitted;" (Emphasis supplied)

2.3 CGST Rules 2017

117. Tax or duty credit carried forward under any existing law or on goods held in stock on the appointed day. - (1) Every registered person entitled to take credit of input tax under section 140 shall, within ninety days of the appointed day, submit a declaration electronically in FORM GST TRAN-1, duly signed, on the common portal specifying therein, separately,

2.4 CGST ACT 2017 Migration of credit

Sec 140. (1) A registered person, other than a person opting to pay tax under section 10, shall be entitled to take, in his electronic credit ledger, the amount of CENVAT credit carried forward in the return relating to the period ending with the day immediately preceding the appointed day, furnished by him under the existing law in such manner as may be prescribed (Emphasis supplied)

Proviso to Sec 140(1): Provided that the registered person shall not be allowed to take credit in the following circumstances namely-

(1) Where the said amount of credit is not admissible as input tax credit under under the Act : (Emphasis supplied)

Sec 1(1) This Act may be called the Central Goods and Service Tax Act 2017

NOTIFICATION No. 28/2016 – Central Excise (N.T.)

New Delhi, the 26th May, 2016

G.S.R.—(E).— In exercise of the powers conferred by section 37 of the Central Excise Act, 1944 (1 of 1944) and section 94 of the Finance Act, 1994 (32 of 1994), the Central Government hereby makes the following rules further to amend the CENVAT Credit Rules, 2004, namely:—

1. (1) These rules may be called the CENVAT Credit (Seventh Amendment) Rules, 2016.

(2) They shall come into force on 1st of June, 2016.

2. In the CENVAT Credit Rules, 2004, in rule 3,

(a) after sub-rule (1), the following sub-rule shall be inserted, namely:—

"(1a) A provider of output service shall be allowed to take CENVAT credit of the Krishi Kalyan Cess on taxable services leviable under section 161 of the Finance Act, 2016 (28 of 2016);"(Emphasis supplied)

(b) in sub-rule (4), after the ninth proviso, the following proviso shall be inserted, namely:-

"Provided also that the Cenvat credit of any duty specified in sub-rule (1) shall not be utilised for payment of Krishi Kalyan Cess leviable under section 161 of the Finance Act, 2016 (28 of 2016);"

(c) in sub-rule (7),

(i) after the words, figures and brackets "sub-rule (1)", the words, figures and brackets ", sub-rule (1a)" shall be inserted;

(ii) after clause (c), the following clause shall be inserted, namely:-

"(d) Cenvat credit in respect of Krishi Kalyan Cess on taxable services leviable under section 161 of the Finance Act, 2016 (28 of 2016) shall be utilised only towards payment of Krishi Kalyan Cess on taxable services leviable under section 161 of the Finance Act, 2016 (28 of 2016)";

3. Question on which advance ruling is required

"Whether accumulated credit by way of Krishi Kalyan Cess (KKC) as appeared in the Service tax return of Input Service Distributor (ISD) ON June 30, 2017 which is carried forward in the electronic credit ledger maintained by the company under CGAST Act 2017, will be considered as admissible input tax-credit?"

4. Our submission

4.1 KKC is levied as per sec 161 of the Finance Act 2016 (Please refer para 2)

Sec 161(5) of the Finance Act specified that for levy and collection of KKC, Chapter V of Finance Act 1994 (Service Tax) will be applicable.

4.2 Entry 92C of Union List I of Indian Constitution empowers legislature to levy service tax as provided under Chapter V of Finance Act 1994.

4.3 122nd amendment of Constitution deletes Entry 92C of Union List I, in view of implementation of Goods and Service Tax.

4.4 It implies KKC is also subsumed in Goods and Service Tax along with service tax. In other words CGST liability as accrued under CGST Act 2017 contains liability on account of KKC as well..

4.5 Rule 3(1a) of CCR includes KKC as cenvat credit.

4.6 CCR provides KKC liability could be set off with KKC credit only. CGST liability subsumed KKC liability in view of 122nd amendment of constitution. Therefore migrated KKC credit will be admissible to setoff with CGST liability.

4.6 Sec 140(1) allows a registered person to carry forward the CENVAT credit in return to electronic credit ledger provided the said credit is admissible under CGST Act 2017.

4.7 Sec 16 and 17 of CGST Act determines which credit will be admissible under CGST Act 2017. There is no restriction on admission of KKC as cenvat credit under the aforesaid provisions of the Act. Therefore KKC credit will also be considered as admissible CENVAT credit as per proviso (1) to sec 140(1) read with sec 16 and sec 17 of the CGST Act 2017.

Prayer : In view of the aforesaid facts of the case and provisions of the law we humbly pray to your kindself to allow us to avail cenvat credit in the form of KKC so migrated to discharge our CGST liability.



03. CONTENTION - AS PER THE CONCERNED OFFICER

The submission, as reproduced verbatim, could be seen thus-

Legal Submission:

What is Krishi Kalyan Cess (KKC)?

It is a Cess which shall be levied and collected in accordance with the provisions of Section 161 of the Finance Act, 2016, called Krishi Kalyan Cess, as service tax on any or all of taxable services at the rate of 0.5% of the value of taxable service.

What about carry forward of credit of Krishi Kalyan Cess, to GST Regime?

Section 140 (1) of the GST law permits carry forward of Credit of GST regime.

Transitional provisions have been prescribed in the GST law which provides tax treatment for transitional matters like spill over transactions, transitional credits etc. It allows existing taxpayers to transfer the input tax credit available as closing balance in the existing tax returns to the GST returns. Therefore, assesses were able to transfer the closing balance of credit in respect of Central Excise duty, Service Tax, Local VAT etc. As the opening credit balance in the GST returns.

As specified in the proviso to Section 140(1) of the Act, the taxable person is allowed to carry forward the credit to the extent admissible as INPUT TAX CREDIT under GST.

Definition of Input tax as given in section 2(62) does not include any cess.

So apparently Krishi Kalyan Cess, will not be allowed to be carried forward.

04. HEARING

The case was taken up for hearing on dt.06.02.2018 and on dt.21.02.2018 when Sh. Subhasis Banerjee, Chartered Accountant attended alongwith Sh. Sandesh Shinde, Executive Accounts (GST) and Sh. Mahesh T. Mandlik, Senior Accounts Officer appeared and reiterated the contention as made in the written submission. The jurisdictional Officer, D.C. GST, LTU 4, Mumbai was not present during both the hearings but has furnished a written submission in the matter.

05. OBSERVATIONS

We have gone through the facts of the case. The issue put before us is whether accumulated credit by way of Krishi Kalyan Cess (KKC) as appeared in the Service tax return of Input Service Distributor (ISD) on June 30, 2017 which is carried forward in the electronic credit ledger maintained by the company under CGST Act 2017, will be considered as admissible input tax-credit. Krishi Kalyan Cess was brought into implementation by Chapter VI of the Finance Act, 2016. Since the applicant mentions about accumulated credit as carried forward in the Service Tax return on 30th June, 2017, we would refer to the relevant transitional provision as available in the GST Act-

140. (1) A registered person, other than a person opting to pay tax under section 10, shall be entitled to take, in his electronic credit ledger, the amount of CENVAT credit carried forward in the return relating to the period ending with the day immediately preceding the appointed day, furnished by him under the existing law in such manner as may be prescribed: Provided that the registered person shall not be allowed to take credit in the following circumstances, namely:—

- (i) where the said amount of credit is not admissible as input tax credit under this Act; or*
- (ii) where he has not furnished all the returns required under the existing law for the period of six months immediately preceding the appointed date; or*
- (iii) where the said amount of credit relates to goods manufactured and cleared under such exemption notifications as are notified by the Government.*

The GST Act does not have a definition of the words "CENVAT credit". The words have also not been defined under the Excise and Service Tax laws. However, we find CENVAT credit rules, 2004 wherein the word "credit" is said to mean "CENVAT credit" as can be seen thus -

Rule 3. CENVAT credit. -



(1) A manufacturer or producer of final products or a provider of taxable service shall be allowed to take **credit (hereinafter referred to as the CENVAT credit)** of -

- (i) the duty of excise specified in the First Schedule to the Excise Tariff Act, leviable under the Excise Act;
- (ii) the duty of excise specified in the Second Schedule to the Excise Tariff Act, leviable under the Excise Act;
- (iii) the additional duty of excise leviable under section 3 of the Additional Duties of Excise (Textile and Textile Articles) Act, 1978 (40 of 1978);
- (iv) the additional duty of excise leviable under section 3 of the Additional Duties of Excise (Goods of Special Importance) Act, 1957 (58 of 1957);
- (v) the National Calamity Contingent duty leviable under section 136 of the Finance Act, 2001 (14 of 2001);
- (vi) the Education Cess on excisable goods leviable under section 91 read with section 93 of the Finance (No.2) Act, 2004 (23 of 2004);
- (via) the Secondary and Higher Education Cess on excisable goods leviable under section 136 read with section 138 of the Finance Act, 2007 (22 of 2007);
- (vii) the additional duty leviable under section 3 of the Customs Tariff Act, equivalent to the duty of excise specified under clauses (i), (ii), (iii), (iv), (v) (vi) and (via);
- (viiia) the additional duty leviable under sub-section (5) of section 3 of the Customs Tariff Act, Provided that a provider of taxable service shall not be eligible to take credit of such additional duty;
- (viii) the additional duty of excise leviable under section 157 of the Finance Act, 2003 (32 of 2003);
- (ix) the service tax leviable under section 66 of the Finance Act;
- (x) the Education Cess on taxable services leviable under section 91 read with section 95 of the Finance (No.2) Act, 2004 (23 of 2004); and
- (xa) the Secondary and Higher Education Cess on taxable services leviable under section 136 read with section 140 of the Finance Act, 2007 (22 of 2007); and
- (xi) the additional duty of excise leviable under section 85 of Finance Act, 2005 (18 of 2005)

The enumerated list of items in respect of which CENVAT credit is available makes no reference to the KKC. By the Notification No. 28/2016 - Central Excise (N.T.), the 26th May, 2016, the Central Government made the following rules, which came into force on 1st of June, 2016, to amend the CENVAT Credit Rules, 2004. In rule 3, as reproduced above, after sub-rule (1), the following sub-rule was inserted :-

“(1a) A provider of output service shall be allowed to take CENVAT credit of the Krishi Kalyan Cess on taxable services leviable under section 161 of the Finance Act, 2016 (28 of 2016);”;

Thus, CENVAT credit was available in respect of KKC. However, we need to see the following amendments, too, as were brought by the aforesaid Notification No. 28/2016 - Central Excise (N.T.), the 26th May, 2016 -

- i. in sub-rule (4), after the ninth proviso, the following proviso was inserted -

“Provided also that the Cenvat credit of any duty specified in sub-rule (1) shall not be utilised for payment of Krishi Kalyan Cess leviable under section 161 of the Finance Act, 2016 (28 of 2016);”;

- ii. in sub-rule (7), after clause (c), the following clause was inserted -

“(d) Cenvat credit in respect of Krishi Kalyan Cess on taxable services leviable under section 161 of the Finance Act, 2016 (28 of 2016) shall be utilised only towards payment of Krishi Kalyan Cess on taxable services leviable under section 161 of the Finance Act, 2016 (28 of 2016);”;

It can be seen that by express provision, it was made clear that KKC would be utilised towards payment of KKC only. Further, it was expressly provided that the list of items in respect of which CENVAT credit is available, as enumerated above, would not be utilized for payment of KKC. Thus, there was a clear demarcation of the credit in respect of KKC. Under GST, there is no levy of KKC. Now, we know that tax and duty and cess are distinct levies. In Cellular Operators Association of India vs. Union of India [Writ Petition (Civil) No. 7837/2016 dt.15.02.2018], the Hon. Delhi High Court was dealing with the Petition for direction that the credit accumulated on account of Education Cess (EC, for short) and Secondary and Higher



Education Cess (SHE, for short) should be allowed to be utilised for payment of service tax leviable and payable on telecommunication services. The facts of this case were thus -

"2. Finance (No. 2) Act, 2004 had introduced levy of EC on excisable goods and taxable services. SHE on excisable goods and taxable services was imposed vide Finance Act, 2007.

3. Under the CENVAT Credit Rules, 2004 (CCR, for short), credit of EC and SHE was admissible and could be utilised for payment of EC and SHE respectively. In other words, CENVAT credit on EC and SHE on inputs, capital goods and input services could be utilised and availed for payment of EC and SHE on manufactured goods and output services. Input EC and SHE credit had the effect of preventing cascading effect on EC and SHE payable down the line. It is an accepted and admitted case that benefit of EC and SHE on inputs, etc. could not have been utilised for payment of excise duty service tax on the output, i.e. manufactured goods or taxable services. Thus, cross utilization of EC and SHE towards excise duty or service tax was impermissible and not permitted.

4. EC and SHE were abolished and were not payable on excisable goods with effect from 1st March, 2015 vide Notification Nos. 14/2015-CE and 15/2015-CE both dated 1st March, 2015. EC and SHE were also abolished and ceased to be payable on taxable services when Section 95 of Finance Act (No. 2) 2004 and Section 140 of Finance Act, 2007 were omitted by Finance Act, 2015. The omission was to take effect from 1st June, 2015 vide Notification No. 14/2015-ST dated 19th May, 2015. As a result, levy of EC and SHE on excisable goods was withdrawn with effect from 1st March, 2015 and in respect of taxable services with effect from 1st June, 2015. The petitioners do not have any grievance against the withdrawal or abolition of levy of EC and SHE.

5. The grievance of the petitioners is, and they claim a vested right to avail benefit of the unutilized amount of EC or SHE credit, which was available and had not been set off as on 1st March, 2015 and 1st June, 2015 for payment of tax on excisable goods and taxable services respectively."

The Hon. Court observed thus -

"It is no doubt true that the two cesses, in the present case, were in the nature of taxes and not fee, but it would be incorrect and improper to treat the two cesses as excise duty or service tax. They were specific cesses for the objective and purpose specified....."

..... As noticed above, in the present case, credit of EC and SHE could be only allowed against EC and SHE and could not be cross-utilized against the excise duty or service tax. In fact, what the petitioners seek is an amendment of the scheme to allow them to take cross utilization of the unutilized EC and SHE upon the two cesses being withdrawn against excise duty and service tax, though this was not the position even earlier."

The Hon. Court dismissed the Writ Petition. In the present case, KKC is to be utilized for payment of KKC only. Therefore, KKC cannot be treated as excise duty or service tax. In view thereof, the CENVAT credit as referred to in sub-section (1) of section 140 would not include the credit in respect of KKC. We can also see the position in respect of the Swachh Bharat Cess (SBC) which was brought in force by Chapter VI (Section 119) of the Finance Act 2015. The Frequently Asked Questions (FAQ) issued by the Central Board of Excise and Customs (CBEC) in regard to SBC explained the new levy thus -

Q.1 What is Swachh Bharat Cess (SBC)?

Ans. It is a Cess which shall be levied and collected in accordance with the provisions of Chapter VI of the Finance Act, 2015, called Swachh Bharat Cess, as service tax on all the taxable services at the rate of 0.5% of the value of taxable service.

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.

Chapters of the Finance Act by which SBC and KKC were brought into effect could be had a look at thus -

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.

CHAPTER VI - KRISHI KALYAN CESS

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 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, or under any other law for the time being in force.



<p>(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.</p> <p>(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.</p>	<p>(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.</p> <p>(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 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.</p>
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As can be seen, both SBC and KKC are on the same lines. Therefore, the FAQs explaining SBC apply with equal force to KKC. Under the GST Act too, the FAQs issued by CBEC clarify thus -

112	Can ITC of Swachh Bharat Cess or Krishi Kalyan Cess be carried forward under GST?	No
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Thus, it can be seen that the non-availability of carry forward of credit with respect to KKC has been clarified to the Trade. In view thereof, we are convinced that accumulated credit by way of Krishi Kalyan Cess (KKC) as appeared in the Service tax return of Input Service Distributor (ISD) on June 30, 2017 which is carried forward in the electronic credit ledger maintained by the company under CGST Act 2017, will not be considered as admissible input tax-credit.

05. In view of the deliberations as held hereinabove, we pass an order as follows :

ORDER

(under section 98 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017)


NO.GST-ARA-18/2017-18/B- 25 Mumbai, dt. 5/4/2018

For reasons as discussed in the body of the order, the question is answered thus -

Q. Whether accumulated credit by way of Krishi Kalyan Cess (KKC) as appeared in the Service tax return of Input Service Distributor (ISD) ON June 30, 2017 which is carried forward in the electronic credit ledger maintained by the company under CGAST Act 2017, will be considered as admissible input tax-credit?

A. Answered in the negative.




B. V. BORHADE
 (MEMBER)


PANKAJ KUMAR
 (MEMBER)

CERTIFIED TRUE COPY


ADVANCE RULING AUTHORITY
 MAHARASHTRA STATE MUMBAI

Copy to:-

1. The applicant
2. The concerned Central / State officer
3. The Commissioner of State Tax, Maharashtra State, Mumbai
3. The Jurisdictional Commissioner of Central Tax

