



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  
8<sup>th</sup> Floor, World Trade Centre, Cuff Parade,  
Mumbai- 400 005

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F.No.195/219-221/WZ/2018-RA/3623 Date of Issue: 10.05.2023

ORDER NO. 1-3 /2023-ST(WZ)/ASRA/Mumbai DATED 08.05.2023 OF  
THE GOVERNMENT OF INDIA PASSED BY SHRI SHRAWAN KUMAR,  
PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY  
TO THE GOVERNMENT OF INDIA, UNDER SECTION 35EE OF THE  
CENTRAL EXCISE ACT, 1944.

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Applicant : M/s Matrix India Assets Advisors Pvt Ltd,  
Ceejay House, 203, Annie Besant Road,  
Worli, Mumbai 400 018.

Respondent : Commissioner of Service Tax-I, Mumbai

Subject : Revision Application filed under section 35EE of the  
Central Excise Act, 1944 against the Orders-in-  
Appeal No. NA/GST & CX/ A-III/MUM/66,67 & 68/18-  
19 dated 28.05.2018 passed by Commissioner, GST and  
CX (Appeals-III), Mumbai

**ORDER**

The Revision Application has been filed by M/s Matrix India Assets Advisors Pvt Ltd, Ceejay House, 203, Annie Besant Road, Worli, Mumbai 400 018 (hereinafter referred to as the "Applicant") against the Orders-in-Appeal No. NA/GST & CX/ A-III/MUM/66,67 & 68/18-19 dated 28.05.2018 passed by Commissioner, GST and CX (Appeals-III), Mumbai.

2. The brief facts of the case are that the Applicant had filed 03 rebate claims amounting to Rs. 4,12,000/-, Rs. 3,39,900/- and Rs. 3,09,000/- for rebate of service tax paid on export of taxable services falling under the category of "Banking & Other Financial Services", as per the provisions of Notification No 11/2005-ST dated 19.04.2005 read with Rule 5 of the Export of Service Rules, 2005, for the period October 2009 to March 2010.

3. Following the due process of law, the Original Adjudicating Authority i.e The Deputy Commissioner, Service Tax-I, Division-II, Mumbai vide Order-in-Original Nos. KCK/R-71/2011, KCK/R-72/2011 and KCK/R-73/2011, all dated 12.05.2011, sanctioned the rebate claims to the Applicant.

4. Aggrieved by the aforesaid Orders-in-Original, the Respondent-Department preferred an appeal before Commissioner (Appeals), GST & CX (Appeals-III), Mumbai, who vide Orders-in-Appeal No. NA/GST & CX/ A-III/MUM/66, 67 & 68/18-19 dated 28.05.2018 set aside the impugned Order-Originals and allowed the appeals filed by the Department.

5. Being aggrieved by the said Orders-in-Appeal, the Applicant has preferred the present Revision Application mainly on the following grounds:

5.1. That the 'Banking or Other Financial services' provided by the Applicant falls under the residual category of services, which would fall under category III of Circular No 111/05/2009-ST dated 24.02.2009. Under the said category it has been specified the services become export only when the services are provided in relation to business or commerce

to a recipient generally located outside India or the recipient is located outside India at the time of provision of the service;

5.2. That the advisory services delivered outside India on the basis of which investment decision are taken outside India, were in effect used in India and hence not export, is grossly an erroneous interpretation of the provisions of the said rules;

5.3. That the term 'used outside India' cannot be further paraphrased and the condition implied, where there are none and such an interpretation would mean that the services which are received and used outside India to arrive at a decision to do or not to do some activity in India, is not an export service and such interpretation is against the intent of the legislature;

5.4. That while deciding on what constitutes as 'Export', Hon'ble Tribunal, Delhi, in the case of M/s Paul Merchants Ltd vs. CCE Chandigarh [2013 (29) S.T.R 257 (Tri. Del.)] held as "That what constitutes as export of service is to be determined strictly w.r.t the provisions of Export of Service Rules, 2005. It is the person who requested for the service is liable to make payments for the same who has to be treated as recipient of service."

5.5. That the ultimate beneficiaries of the services provided by the applicant are located outside India, the services are enjoyed outside India and the consumer of such services provided are outside India. As such the ultimate outcome of the services is exhausted outside India hence it falls within the ambit of definition of "Export of Service" as recipients are perpetually situated outside India;

5.6. That the risk and the rewards accruing on the investments made by its clients based on the advisory service given by the applicant squarely lies with its clients, who is the ultimate beneficiary and who is located outside India;

5.7. That the decision of Hon'ble Tribunal's decision in case of Microsoft Corpn. (I) Pvt Ltd vs. Commissioner of Service Tax, New Delhi [2009(15)STR 680, (Tri.Del)] does not hold goods in the instant case;

5.8. That a larger Bench of Tribunal while deciding a case on similar facts of Microsoft Corpn (I) Pvt. Ltd vs. Commissioner of Service Tax, New Delhi [2014(36) STR 766, (Tri. Dell)] had decided the matter in favour of Microsoft India, exactly opposite to the views expressed by the Hon'ble Tribunal in the earlier case.

Under the circumstances the Applicant prayed that the views taken by the Appellate Authority is erroneous and unreasonable and needs to be reversed.

6. Personal hearing was scheduled on 09.11.2022 or 22.11.2022, 13.12.2022 or 10.01.2023, 08.02.2023 or 15.02.2023, 15.03.2023 and 06.04.2023. However, no one appeared for personal hearing on any of the dates fixed for hearing. Since sufficient opportunity for personal hearing has been given in the matter, the case is taken up for decision on the basis of the available records.

7. Government has carefully gone through the relevant records available in case file and also perused the impugned Orders-in-Appeal.

8. Government observes that that the dispute in the present case is regarding admissibility of rebate of service tax paid on services exported by the Applicant. The Appellate Authority has set aside the order of the Original Adjudicating Authority, wherein the claim for rebate of the service tax paid on the services exported was granted to the Applicant.

8.1 Government finds that at this juncture it is pertinent to examine Section 86 of the Finance Act, 1994 which deals with appeals to the Hon'ble Tribunal; the same is reproduced below:-

*"Section 86. Appeals to Appellate Tribunal. –*

*(1) Save as otherwise provided herein an assessee aggrieved by an order passed by a Principal Commissioner of Central Excise or Commissioner of Central Excise under section 73 or section 83A by a Commissioner of Central Excise (Appeals) under section 85, may appeal to the Appellate Tribunal against such order within three months of the date of receipt of the order.*

*Provided that where an order, relating to a service which is exported, has been passed under section 85 and the matter relates to grant of rebate of service tax on input services, or rebate of duty paid on inputs, used in providing such service, such order shall be dealt with in accordance with the provisions of section 35EE of the Central Excise Act, 1944(1 of 1944).*

*Provided further that all appeals filed before the Appellate Tribunal in respect of matters covered under the first proviso, after the coming into force of the Finance Act, 2012(23 of 2012), and pending before it up to the date on which the Finance Bill, 2015 receives the assent of the President, shall be transferred and dealt with in accordance with the provisions of section 35EE of the Central Excise Act, 1944(1 of 1944)."*

[Emphasis supplied]

8.2 A plain reading of Section 86 of the Finance Act, 1994 indicates that the power for Revision of Orders of the Commissioner (Appeals) by the Central Government, as provided for by Section 35EE of the Central Excise Act, 1944, is limited to those matters which relate to *grant of rebate of service tax or duty paid on input services which were used in providing a service which was exported*. As discussed above, the instant issue pertains to rebate of service tax paid on the services exported and not on inputs/input services used for providing the same and hence Government notes that in terms of Section 86 of the Finance Act, 1994, it does not have jurisdiction over any matter relating to the same.

9. In view of the above, Government dismisses the subject Revision Application as the same is non-maintainable due to lack of jurisdiction.

  
8/5/23  
(SHRAWAN KUMAR)

Principal Commissioner & Ex-Officio  
Additional Secretary to Government of India

ORDER No. 1-3/2023-ST(WZ) /ASRA/Mumbai DATED 05.05.2023

To,

M/s Matrix India Assets Advisors Pvt Ltd,  
Ceejay House, 203, Annie Besant Road,  
Worli, Mumbai 400 018.

Copy to:

- 1) The Principal Commissioner of CGST, Mumbai Central Commissionerate, GST Bhavan, 115 Maharshi Karve Road, opp Churchgate Station, Mumbai 400 020.
2. Commissioner, Central Goods & Services Tax, (Appeals-II), 3<sup>rd</sup> Floor, CGST Bhavan, Plot No C-24, Sector E, BKC, Bandra (East), Mumbai 400 051.
3. SKN Legal Advisory Services LLP, 57A, Park Street, Block I, Flat No 5, Park Mansion, Kolkata-700 016.
4. Sr P.S. to AS (RA), Mumbai.
5. Notice Board.