REGISTERED SPEED POST

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. Nos. 198/109/2018-RA /7626
198/110/2018-RA

Date of issue: 16.12.2022

ORDER NO. 1206-1207 /2022-CX (WZ)/ASRA/MUMBAI DATED 15.12.2022 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.

Applicant : Commissioner, CGST & CX, Surat

Respondent: M/s. Famy Care Ltd.

Subject : Revision Application filed, under Section 35EE of the Central Excise Act, 1944 against the Orders-in-Appeal passed by the Commissioner of CGST & CX Appeals Commissionerate, Surat.

ORDER

Two Revision Applications have been filed by Commissioner, CGST & CX, Surat (here-in-after referred to as 'the Applicant-Department') against following Orders-in-Appeal (OIA) passed by the Commissioner of CGST & Central Excise Appeals Commissionerate, Surat:-

| RA No. | OIA No./date | OIO No./date | Amount sanctioned (in Rs.) | Amount rejected (in Rs.) |
|---|---|---|---|---|
| 198/109/18-RA | CCESA-SRT(APPEALS)/PS-564/2017-18 dated 05.02.18 | 37/AC/REF/ST/DIV-UBR/2015-16 dated 30.12.2015 | 2,38,645/- | 4,36,228/- |
| 198/110/18-RA | CCESA-SRT(APPEALS)/PS-563/2017-18 dated 05.02.18 | 38/AC/REF/ST/DIV-UBR/2015-16 dated 30.12.2015 | 48,593/- | 53,718/- |

2.1 Brief facts of the case are that M/s. Famy Care Ltd., 100% EOU (Unit-I), Plot No.1608,1609, GIDC, Sarigam (hereinafter referred as to 'the Respondent') is engaged in manufacturing of excisable goods viz. Oral Contraceptive tablets falling under Ch.30 of the Central Excise Tariff Act, 1985. They had filed rebate claims, under Notification No. 41/2012-ST dated 29.06.2012, in respect of the service 'clearing and forwarding service' received and utilized by them for export of excisable goods. The rebate sanctioning authority, vide impugned OIOs sanctioned the rebate claim partly and rejected the remaining claim, as detailed at above given table, on the ground that it is relating to C&F Agent service provided beyond port of export, hence, not admissible as per the provisions of Notification No. 41/2012-ST dated 29.06.2012, as amended.

2.2 Aggrieved, the respondent filed an appeal with the Commissioner (Appeals) who vide impugned OIAs remanded the case back to Original authority on the following grounds:

i. the adjudicating authority has mis-interpreted the provisions of Not. No.41/2012-ST in order to hold that refund of service tax paid on services used within the place of removal (Port of export) is to be allowed and beyond that refund should not be granted;

ii. in terms of para 6 of Board's Circular No.999/06/2015-CX dated 28.2.2015, the place of removal shall be the Port/ICD/CFS hence, the C&F Agent service provided beyond the place of port of export is admissible;

iii. however, the refund is subject to fulfillment of some mandatory conditions/ procedure for which the case has been, remanded back to the adjudicating authority to examine this aspect and re-adjudicate the issue of eligibility of refund.

3. Being aggrieved, the applicant-department has filed the current Revision Applications mainly on the following grounds:

(i) The refund amount was rejected by the adjudicating authority in the impugned orders as it was relating to C&F Agent service provided beyond port of export. The refund claims were filed under the terms of Not. 41/2012-ST dated 29.6.2012. Clause (a) of the said Notification says that "*the rebate shall be granted by way of refund of service tax paid on the specified services.*" As per sub-clause (A) of explanation of Clause (a), "*specified services*" means-

- in the case of excisable goods, taxable services that have been used beyond the place of removal for the export of said goods
- in the case of goods other than (i) above, taxable services used for, the export of said goods;
- Sub-clause (B) defines "place of removal" shall have the meaning assigned to it in Section 4 of the Central Excise Act, 1944

(ii) Clause (i) above has been amended vide Notification No. 1/2016-ST dated 3.02.2016 to the extent that "(i) *in the case of excisable goods, taxable services that have been used beyond factory or any other place or premises of production or manufacture of the said goods, for their export.*" This amendment has retrospective effect from 1.7.2010 as per the Tenth Schedule of the Finance Act, 2016.

(iii) Further, Board's Circular No. 999/6/0015-CX dated 28.2.2015 clarifies that in case of export by manufacturer exporter, the place of removal, would be Port/ICD/CFS (Para 6). Para 8 of the said Circular says that *"...in isolated cases, it may extend further also depending on the facts of the case, but in no case, this place can be beyond the Port/ICD/CFS ...."*

(iv) From the above provisions, it is crystal clear that the purpose of Not. No. 41/2012-ST is to have rebate/refund of service tax paid on taxable services that have been used beyond factory or any other place or premises of production or manufacture of the said goods, for their export, which means upto the place of export (Port). In support, para 8 of the said Circular further clarifies that this place cannot be beyond the Port/ICD/CFS. Therefore, the service tax paid on service provided beyond the place Port is not covered/applicable in the Notification No.41/2012-ST, hence, is not eligible for refund under the said Notification. In view of this, the adjudicating authority has correctly rejected the refund as the said services i.e. C&F Agent service were provided beyond the place of export i.e. Port, which is not eligible for rebate/ refund in terms of the said Notification. Thus, the Commissioner(A) has erred in holding, under para 6 of the Order-in-Appeal, that refund on specified services provided beyond the place of export i.e. Port (treating it as place of removal) is eligible in terms of Notification No.41/2012-ST, even though the phrase "beyond the place of removal", as mentioned under clause (i) of Explanation (A) of the said Notification No.41/2012-ST, has already been amended to "*...beyond factory or any other place or premises of production or manufacture of the said goods, for their export*", with retrospect effect from 01.07.2012

On the above grounds, the applicant-department prayed that impugned OIA may be set aside.

4.1 Personal hearing in this case was held on 22.11.2022 and was attended by Advocate D.A. Bhalerao, and Advocate Tanmay Bhave on behalf of the respondent. They submitted a common written submission and citations. They further submitted that this RA is not maintainable before Revisionary Authority. They also submitted that Commissioner(A) Order is legal & proper and requested to reject both the applications on merit as well.

4.2 No representative from the side of applicant-department appeared nor any written communication has been received from them in the matter.

4.3 In their written submission, the respondent has inter alia contended that:

i. At the outset, it is submitted that the present Revision Applications filed by the department are not maintainable before this Hon'ble Authority for the reasons that

   a. Section 35EE of the Central Excise Act, 1944 provides for filing of Revision Application against the orders passed under Section 35A where the order is of the nature referred to in the first proviso to Sub-Section (1) of Section 35B of the Central Excise Act, 1944

   b. On bare perusal of said proviso, it can be seen that the case of respondent is not covered by any of the clause mentioned in the said proviso as said proviso does not deal with the rebate/refund of Service Tax paid on input services used for export of goods and is limited to rebate of excise duty paid on exported goods or raw materials used for the same and not otherwise.

   c. It is submitted that even the proviso to Section 86(1) inserted in the year 2015 contemplates application of Section 35EE of Central Excise Act, 1942; only in cases where an order passed under Section 85 is related to export of service and grant of rebate of Service tax paid on input services or rebate of duty paid on inputs, used in providing such service. Whereas in the

in present case, the matter is related to grant of rebate of service tax paid on input services used for export of goods and not services.

d. In support of this contention the reliance is placed on the following judgments:

- order dated 23.08.2022 Passed in Appeal No. 87498 of 2019 in the matter of Living Stone vs Commissioner, CGST passed by the Hon'ble CESTAT Mumbai
- Vodafone Mobile Services Ltd vs CST (2016 (45) STR 301 (Tri. Mum)
- CST vs Ambe International [2015 (40) STR 441 (Bom)]
- Glyph International vs UOI [2014 (34) STR 727 (Del)]

ii. The grounds urged in the revision application by the department are contrary to the notification and hence needs to be rejected.

a. It is submitted that ground assailed in the present Application to set aside the order of Hon'ble Commissioner (Appeal) are nothing but reiteration of erroneous justification made by the Original Adjudicating Authority in its order, said ground in nut shell is "that the service tax paid on the services provided beyond the Port/ICD/CFS i.e. beyond the place of port and the same is not covered by the Not. N. 41/2012-ST."

b. In this regard it is submitted that the said ground is absurd and arising out of prejudice mind and without looking in to the legislative intent behind introduction of retrospective amendment in the year 2016 widening the scope of specified services provided from beyond the place of removal to any services provided beyond the place of manufacture. It is also worthwhile to mention that said amendment has also removed the term Place of removal as defined under the Section 4 of Central Excise Act, 1942.

c. Therefore, the reliance placed by the department on the CBEC Circular dated 28.02.2015 clarifying the definition of "Place of Removal" while interpreting the specified services under Not. No.

41/2012 has no relevance since CBE&C Circular deals with CENVAT Credit Rules.

d. Hence the present Applications filed by Department needs to be set aside. In support of this contention the reliance is placed on the following judgments

- Jain Irrigation Systems Ltd vs CCE [2016 (41) STR 837 (Tri. Mum)]
- Alps Industries Ltd vs CCE [2016 (42) STR 370 (Tri. Del)]

iii It is settled preposition of law that words employed in notification should be interpreted as it is.

a. The word used in notification no. 41/2012 with respect to specified Services wherein the Services on which Service Tax is paid is refundable by way of rebate to the exporter of the Goods provided these services are "used beyond the place of removal"

b. The Original Adjudicating Authority and the Department has misconceived this condition in totality by deploying the new phrase "up to the place of export".

c. Such modification in the language of the notification is without authority of law which only exhibits predetermined mind to restrict the benefit granted by the legislation.

d. The term beyond place of removal for export of goods is wide enough to cover the services which are beyond the place of removal and has no restriction as conceived by the department up to the place of export.

e. While preferring the aforesaid ground the department has failed to appreciate the catena of judgments of the Hon'ble Tribunal and High Court that in case of the export the place of removal got shifted to the load port.

- Bharat Mines & Minerals vs CCE [2020 (38) G.S.T.L. 101 (Tri. - Del.)]
- CCE vs GTP Exports Pvt Ltd. [2017 (48) S.T.R. 263 (Tri. - Chennai)]

- Bharat Heavy Electricals Ltd. vs Commissioner Of C. Ex., Bhopal [2017 (49) S.T.R. 81 (Tri. - Del.)]
- 20 Microns Limited vs Commissioner of C. Ex. & S.T., Vadodara [2017 (47) S.T.R. 257 (Tri. - Ahmd.)]

5. 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.

6. Government observes that the respondent, a manufacturer-exporter had exported Oral Contraceptive tablets falling under Ch.30. They had filed rebate claims under Notification No. 41/2012-ST dated 29.06.2012 for rebate of Service Tax paid on specified service - 'clearing and forwarding service' used for export of the goods. The claims were partially rejected by the rebate sanctioning authority on the ground that said service was provided beyond port of export, hence, not admissible as per the provisions of Notification No. 41/2012-ST dated 29.06.2012, as amended. The appeals filed by the respondent were allowed by the Appellate Authority, hence the applicant-department have filed the impugned two Revision Applications.

7.1 Government finds that the Revision Applications in Service Tax matters are filed before the Government of India as per the provisions of Section 35EE of the Central Excise Act, 1944 (made applicable to service tax matters by Section 83 of the Finance Act, 1994) read with Section 86 of the Finance Act, 1994 and 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)." (1A)."*

7.2 Government observes that the sub-section (1) of Section 86 of the Finance Act, 1994 stipulates that an appeal against an order of Commissioner of Central Excise (Appeals) is to be filed before the Appellate Tribunal except in those cases where the order is relating to grant of rebate of service tax on 'input services/rebate of duty paid on inputs' used in providing an output service which has been exported. Such orders of the Appellate Authority are to be dealt in accordance with the provisions of Section 35EE of the Central Excise Act, 1944. Government finds that in the instant case, the rebate claimed is of Service Tax paid on an input service used for export of goods and not services and therefore the matter remains under the jurisdiction of the Appellate Tribunal for appeal against the impugned two Orders-in-Appeal. Therefore, the revision applications filed by the applicant-department are not maintainable under Section 35EE of the Central Excise Act, 1944.

8. In view of the above discussions, the two revision applications filed by the applicant-department are dismissed as non-maintainable due to lack of jurisdiction.

Shrawan 15/12/22

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

ORDER No. 1206-1207/2022-CX (WZ)/ASRA/Mumbai dated 15.12.2022

To,
M/s. Famy Care Ltd.,
Brady House, 2nd Floor,
12/14, Veer Nariman Road,
Fort, Mumbai – 400 001.

Copy to:

1. Commissioner of CGST & CX,
   Surat, New Central Excise Building,
   Chowk Bazar, Surat – 395 001.

2. M/s. D & A Dharmadhikari & Associates,
   Unit No.45/46, Veena Nagar, Ph.1,
   LBS Marg, Mulund(W), Mumbai – 400 080.

3. Sr. P.S. to AS (RA), Mumbai
4. Guard file
5. Notice Board.