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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. 196/03/ST/16-RA / 1209

Date of Issue: 9.03.2022

ORDER NO. 15/2022-ST(WZ)/ASRA/MUMBAI DATED 07.03.2022  
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 : M/s Lloyds Offshore Global Service Pvt. Ltd.,  
C/o Fox Mandal Associates,  
No.6/12, Primrose Road, Gurappa Avenue,  
Bengaluru-560025

Respondent: Commissioner of Service Tax (Appeals)-1

Subject : Revision Application filed, under Section 35EE of the Central  
Excise Act, 1944, against the Order-in-Appeal No. SR/58/ST-  
1/2015 dated 03.12.2015 passed by the Commissioner of  
Service Tax (Appeals)-1, Mumbai Zone.

**ORDER**

This Revision Application has been filed by M/s Lloyds Offshore Global Services Private Limited, C/o Fox Mandal Associates, No.6/12, Primrose Road, Guruppa Avenue, Bengaluru-560025 (Unit 2, Bagmane Technology Park, C.V. Raman Nagar, Bangalore-560093) (hereinafter referred to as "the applicant"), against the Order-in-Appeal No. SR/58/ST-1/2015 dated 3.12.2015 passed by the Commissioner of Service Tax (Appeals)-1, Mumbai Zone.

2. The applicant were registered with Service tax for providing taxable service namely Business Support Service as defined under Section 65(105)(zzzq) of the Finance Act, 1994 and had filed rebate claim of Rs.2,38,28,128/-in terms of Notification 11/2005 dated 19-04-2005 as amended read with Rule 3 of Export of Service Rules, 2005, on the grounds that they have exported the 'Business Support Service' on payment of Service Tax under claim for rebate for the services exported during the period April 2008 to March 2009 as per Rule 3 of Export of Service Rules, 2005. The Assistant Commissioner, Service Tax, Dn-II, Mumbai vide OIO No.RK/R-301/2009 dated 08.12.2009, rejected the rebate claim on the grounds that the applicant has not fulfilled the conditions given in the Notification 11/2005 in as much as the applicant has failed to prove that the services provided are rendered outside India.

3. Aggrieved by the said Order, the applicant filed appeal with the Commissioner Appeal. Commissioner Appeal vide his Order-in-Appeal No. SR/58/ST-1/2015 dated 3.12.2015 upheld the A.C's Order and rejected the applicant's appeal on the grounds that the services provided by the applicant cannot be said to be export of services as these are performed, used and consumed in India.

4. Aggrieved by the Commissioner Appeal's Order, the applicant filed the present Revision Application on the grounds that the services provided by them qualify as export of services as per the statutory provisions and placed reliance on the judgement of CESTAT in case of Paul Merchants Ltd. Vs CCE, Chandigarh [2013(29) S.T.R. 257(Tri-Del)] and Vodafone Cellular Essar Limited [2013-TIOL-566-CESTAT-MUM]. The applicant was granted personal hearing on 01.07.2021 or 15-07-2021, 01.09.2021 or 07.09.2021 and 08.10.2021 or 14.10.2021. Shri Ravi Banthia, Shri Sandeep Agrawal, Shri Glen Alexander and Ms Neha Jhunjhunwala appeared online for the hearing and reiterated the earlier submissions. They submitted that since benefit of their services have accrued outside India, it should be considered export. They stated that during subsequent periods, Department Audit has never objected on this ground. They requested to allow rebate and proceeded to submit written submission within a week.

5. Government has carefully gone through the relevant case records, perused the impugned Order-in-Original, Order-in-Appeal and the Revision Applications filed by the applicant. Government notes that the issue to be decided in this case is regarding admissibility of the rebate of service viz 'Business Support Service' exported as claimed by the applicant in terms of Notification No. 11/2005-ST dated 19.04.2005 read with Export of Service Rules, 2005. The adjudicating authority and the appellate authority have held that the services provided by them cannot be held as export of service and hence the rebate of the service tax paid on these services is not admissible.

6.1. 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 matters by Section 83 of the Finance Act, 1994) in view of 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)."*

6.2. Sub-section (1) of Section 86 of the Finance Act, 1994 stipulates that all appeal against Orders of Commissioner Appeal are to be filed before the Appellate Tribunal except those cases where the orders are relating to grant of rebate of service tax on input services, or rebate of duty paid on inputs where services have been exported. These case have been directed to be dealt with in accordance with the provisions of Section 35EE of the Central Excise Act, 1944. Government finds in the instant case, the dispute is in respect of the admissibility of the rebate claimed on the services exported as claimed by the applicant and this category does not fall in the aforesaid exception category and the applicant aggrieved by these order must file appeals before the Appellate Tribunal.

7. Government concludes that the present case involves admissibility of rebate of service tax paid on services exported and therefore remains outside the jurisdiction of this office. Hence the Revision application filed by the

applicant is not maintainable under Section 35EE of the Central Excise Act, 1944.

8. In view of the above discussions, the revision application filed by the applicant is dismissed as non-maintainable due to lack of jurisdiction.

*Shrawan*  
7/3/22  
(SHRAWAN KUMAR)  
Principal Commissioner & Ex-Officio  
Additional Secretary to Government of India

ORDER No. 15/2022-ST (WZ)/ASRA/Mumbai DATED 07.03.2022

To,  
M/s Lloyds Offshore Global Service Pvt. Ltd.,  
C/o Fox Mandal Associates,  
No.6/12, Primrose Road, Gurappa Avenue,  
Bengaluru-560025

Copy to:

1. The Commissioner of CGST, East, TTMC, BMTC Bus Stand Complex, Hal Airport Road, Domluru, Banagalore-560071.
2. Sr. P.S. to AS (RA), Mumbai
3. Guard file.
4. Notice Board.