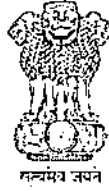


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GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
DEPARTMENT OF REVENUE

Office of the Principal Commissioner RA and  
Ex-Officio Additional Secretary to the Government of India  
8<sup>th</sup> Floor, World Trade Centre, Cuffe Parade,  
Mumbai- 400 005

F. NO. 198/59/WZ/18-RA /1926

Date of Issue: 31.03.2023

ORDER NO. 189 /2023-CX (WZ) /ASRA/MUMBAI DATED 27.03.2023 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.

Applicant : Commissioner of CGST & Central Excise,  
Gandhidham,

Respondent : M/s Gokul Overseas,  
Plot No.349 to 352, 368 to 376, 436,  
Sector IV, KASEZ, Gandhidham - 370230.

Subject : Revision Application filed under Section 35EE of the Central Excise Act, 1944 against the Order-in-Appeal No. KCH-EXCUS-000-APP-138-2017-18 dated 18.12.2017 passed by Commissioner of CGST & Central Excise (Appcals), Rajkot.

## ORDER

The subject Revision Application has been filed by the Commissioner of CGST & Central Excise, Gandhidham (here-in-after referred to as 'the applicant/Department') against the impugned Order-in-Appeal dated 18.12.2017 passed by the Commissioner of CGST & Central Excise (Appeals), Rajkot. The said Order-in-Appeal disposed of an appeal filed by M/s Gokul Overseas, Gandhidham (here-in-after referred to as "the respondent") against an Order-in-Original dated 17.12.2009 passed by the Deputy/Assistant Commissioner, Service Tax Division, Rajkot, which in turn disposed of a refund claim filed by the respondent.

2. Brief facts of the case are that the respondent had filed a refund claim seeking refund of the service tax paid on various input services utilized towards exported goods amounting to Rs.4,08,704/- under notification no.41/2007-ST dated 06.10.2007. The original authority rejected the said claim on the grounds that the documents submitted failed to meet the requirements prescribed under Rule 4A of the Service Tax Rules, 1994 and notification no.41/2007-ST. The respondent chose to file an appeal before Commissioner (Appeals), who vide the impugned Order-in-Appeal allowed Rs.4,03,958/- and rejected Rs.4,746/- of the refund claim by the respondent.

3. Aggrieved, the applicant/Department has filed the subject Revision Application against the Order-in-Appeal on the following grounds:-

(a) The Commissioner (Appeals) did not appreciate that the debit Notes/Invoice in question were not signed and hence were not proper documents for allowing refund;

(b) The Commissioner (Appeals) had allowed the appeal of the respondent which was incorrect in terms of CBEC Circular No.106/9/2008-ST dated 11.12.2008;

(c) Reliance was placed on several decisions in support of their case.

In light of the above, the applicant submitted that the impugned Order-in-Appeal be set aside.

4. Personal hearing in the matter was granted on 13.10.2022, 03.11.2022, 09.12.2022 and 23.12.2022, however, nobody appeared on behalf of the applicant/Department. Shri R. Subramanya, Advocate appeared online on behalf of the respondent on 29.12.2022. He submitted that the applicant Department had filed application before wrong forum as Additional Secretary (RA) had no jurisdiction in the present matter. He requested to reject the application. The respondent also submitted a written submission dated NIL wherein they reiterated that the instant Revision Application be dismissed on the grounds of jurisdiction and maintainability.

5. Government has carefully gone through the relevant records, the written and oral submissions and also perused the impugned Order-in-Original and the impugned Order-in-Appeal.

6. Government observes that that the dispute in the present case is regarding admissibility of refund of service tax involved on the input services used by the respondent in the manufacture and export of goods. Government notes that in terms of Section 35B and Section 35EE of the Central Excise Act, 1944 the Revisionary Authority has jurisdiction to decide cases relating to rebate of duty of excise on inputs used in the manufacture of goods which are exported however the same does not cover refund/rebate of service tax paid on input services used in the manufacture and export of goods. Section 86 of the Finance Act, 1994 which deals with appeals to the Hon'ble Tribunal and Applications before the Revisionary Authority, with respect to Service Tax, 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]

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 or inputs which are used *in providing a service which was exported*. As discussed above, the instant issue pertains to rebate of service tax paid on the input services used in the manufacture and export of goods and not services. Given the above, Government notes that it does not have jurisdiction over the issue involved in the present *lis* either under Section 35EE of the Central Excise Act, 1944 or Section 86 of the Finance Act, 1994.

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

*Shrawan*  
27/3/23  
(SHRAWAN KUMAR)

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

ORDER No. 189/2023-CX (WZ) /ASRA/Mumbai dated 27.03.2023

To,

The Commissioner of CGST & Central Excise, Gandhidham,  
GST Bhawan, Plot No.82, Sector 8, Opp. Ram Leela Maidan,  
Gandhidham, Kutch, Gujarat – 370201.

Copy to:

1. M/s Gokul Overseas, Plot No.349 to 352, 368 to 376, 436, Sector IV, KASEZ, Gandhidham – 370230.
2. The Commissioner (Appeals), GST & Central Excise, Rajkot, 2<sup>nd</sup> floor, GST Bhawan, Race Course Ring Road, Rajkot – 360 001.
3. M/s Subramanya Law Company, #509, Venus Amadeus, Jodhpur Char Rasta, Satellite Road, Ahmedabad – 380 015.
4. Sr. P.S. to AS (RA), Mumbai
5. Notice Board.