

REGISTERED SPEED POST AD



**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. 196/36/ST/16-RA / 1165

Date of Issue: 23.03.2022

ORDER NO. 26 /2022-ST(WZ)/ASRA/MUMBAI DATED 22.3.2022  
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 Zoetis Pharmaceutical India Pvt. Ltd.

Respondent : The Commissioner of CGST & Central Tax, Mumbai(West).

Subject : Revision Application filed under Section 35EE of the Central Excise  
Act, 1944 against Order-in-Appeal No. MUM-SVTAX-002-APP-  
431/16-17 dated 28.09.2016 passed by the  
Commissioner(Appeals) Service Tax-II, Mumbai.

**ORDER**

The revision application has been filed by M/s Zoetis Pharmaceutical India Pvt. Ltd. 31 & 32, 34 Floor, Kalpataru Synergy Opp. Grand Hyatt. Santacruz (East), Mumbai-400 055 (hereinafter referred to as "the applicant") against Order-in-Appeal No. MUM-SVTAX-002-APP-431/16-17 dated 28.09.2016 passed by the Commissioner(Appeals) Service Tax-II,Mumbai.

2. The facts in brief, of the case, are that the adjudicating authority vide impugned Order-in-original has sanctioned to the applicant, a rebate claim of service tax paid on the export of services under notification Notfn.No.11/2005-ST dated 19.4.2005, for the period October 2008 to February 2009 amounting to Rs.1,11,25,698/-. The refund claim filed by the applicant was initially rejected by the Asst. Commissioner, Div.IV (erstwhile), Service Tax, Mumbai-II vide OIO No.ST 11/Div IV/149/2009-10 dated 23.11.2009, for non-submission of agreement entered into with their foreign client; ii) FIRCs did not mention if remittance was towards export of service; iii) condition No.2(a) and (b) of Notin. not fulfilled etc. The Commissioner (Appeals)-IV, Central Excise & Service Tax, Mumbai Zone 1, on an appeal against the OIO dated 23.11.2009, vide Order No.261/BPS/MUM/2013 dated 9.7.2013 remanded the matter back to the Adjudicating Authority for passing orders afresh after affording the applicant adequate opportunity of being heard in person. The Assistant Commissioner, Service Tax, erstwhile Div.IV, Mumbai-11, has vide the impugned order sanctioned the rebate claim of Rs. 1,11,25,698/-. Being aggrieved by the aforesaid order-in-original the Department filed appeal before the Commissioner(Appeals) Service Tax-II,Mumbai, who vide Order-in-Appeal No. MUM-SVTAX-002-APP-431/16-17 dated 28.09.2016 rejected their appeal.

3. Being aggrieved and dissatisfied with the impugned order in appeal, the applicant had filed this revision Application under Section 35EE of the Central Excise Act, 1944 before the Government.

4. Personal hearing in this case was fixed for 20.10.2021, Shri Ashish Modi, consultant and Mr. Ackruti Sharma, Consultant appeared online on behalf of the applicant and reiterated their earlier submissions. They submitted that correct classification of services is Scientific & Technical Consultancy. They further submitted that they have been given rebate on the same services from August,2009 onwards. They submitted copy of the order passed by the original authority.

5. Government has carefully gone through the relevant case records, perused the impugned Order-in-Appeal, the Order-in-Original, the revision application and the submissions filed by the applicant. It is observed that the dispute is regarding admissibility of rebate of service tax paid on output taxable service('business development services') rendered by the applicant for which they have filed claim under Rule 5 of the Export of Services Rules, 2005 read with Notification No. 11/2005-ST dated 19.04.2005.

6. Government observes that the Notification No. 11/2005-ST dated 19.04.2005 has been issued in exercise of the powers conferred by Rule 5 of the Export of Services Rules, 2005. The preamble of the notification is reproduced below for a better appreciation of its ambit.

*"In exercise of the powers conferred by rule 5 of the Export of Service Rules, 2005 (hereinafter referred to as the said rules), insofar as it relates to export of taxable services to the countries other than Nepal and Bhutan, the Central Government hereby directs that there shall be granted rebate of the whole of the service tax and cess paid on all taxable services exported in terms of rule 3 of the said rules, to any country other than Nepal and Bhutan, subject to the conditions, limitations and procedures specified hereinafter, -"*

It is clear from the text that the service tax and cess paid on the output services exported is rebated in terms of this notification.

7. The powers for revision under the statute are limited to certain matters. The powers of revision in the Central Excise Act, 1944 in Section 35EE of the Act are exercisable in cases where the order is of the nature referred to in the first proviso to sub-section (1) of Section 35B of the CEA, 1944. Amongst other matters which are covered by the powers of revision vested in the Central Government, the part relating to rebate mentioned in the first proviso to sub-section (1) of Section 35B of the CEA, 1944 specified orders relating to "a rebate of duty of excise on goods exported to any country or territory outside India or on excisable materials used in the manufacture of goods which are exported to any country or territory outside India". Therefore, the two types of rebate cases which were specified for exercise of revisionary powers vested in the Central Government under Section 35EE were rebate of duty paid on exported goods and rebate of duty paid on excisable materials(inputs) used in the manufacture of exported goods. This proviso clearly does not mention rebate of service tax paid on taxable services which are exported.

7.1 Revision Applications in service tax matters are filed before the Central Government as per the provisions of Section 35EE of the CEA, 1944(made applicable to service tax matters by Section 83 of FA, 1994) in terms of the first proviso of sub-section (1) of Section 86 of the FA, 1994. The Section 86 specifies the orders which are to be appealed against before the Appellate Tribunal with a proviso for exceptions where revision application is to be preferred. The Section 86 of the FA, 1994 is reproduced below for the sake of lucidity.

*"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)."*

7.2 Sub-section (1) of Section 86 of the FA, 1994 stipulates that appeals against orders of Commissioner(Appeals) are to be filed before the Appellate Tribunal. However, a specific category has been carved out of these orders in the first proviso to sub-section (1) of Section 86; viz. orders relating to grant of rebate of service tax on input services and rebate of duty paid on inputs where services have been exported are directed to be dealt with in accordance with the provisions of Section 35EE of the CEA, 1944. Unmistakeably, the category of rebate of service tax paid on taxable service exported does not fall in the exception category and therefore the assessee aggrieved by these orders cannot obtain relief by filing revision applications under Section 35EE.

7.3 The Notification No. 11/2005-ST dated 19.04.2005 has been issued specifically for grant of rebate of service tax paid on taxable services which have been exported. Therefore, the remedy for an applicant who is aggrieved by an order passed by Commissioner(Appeals) involving Notification No. 11/2005-ST dated 19.04.2005 would lie before the Appellate Tribunal; i.e. the Hon'ble CESTAT. It is

observed that this issue has been discussed by the Hon'ble CESTAT in Vodafone Mobile Services Ltd. vs. Commissioner of Service Tax, Pune[2016(45)STR 301(Tri-Mum)].

"5. I find that though as per the provision .....

*From the above Section 86 there is explicit provision by which the order relating to grant of rebate of service tax on input, service tax or rebate of duty paid on input have been carved out for appeal before this Tribunal and in such cases the assessee is required to file revisionary application under Section 35EE. However, in the said provision, the rebate of service tax paid on output service has not been carved out therefore present appeal on the issue of rebate of service tax paid on output service exported out of India is maintainable before this Tribunal. As regard the contention of the ld. AR that Section 35EE is applicable in the service tax matters by virtue of Section 83, I am of the view that though Section 35EE is applicable but only for the cases related to rebate of service tax paid on input service or duty paid on inputs which were used in the export of services. Since there is independent provision under Section 86 in such cases Section 35B need not to be resorted. Therefore, the present appeals are maintainable....."*

8. Government concludes that since the present case involves rebate of service tax paid on taxable services which have been exported, the matter is beyond the scope of the revisionary powers vested in the Central Government under Section 35EE of the CEA, 1944 read with the proviso to sub-section (1) of Section 86 of the FA, 1994. In the result, the revision application filed by the applicant is not maintainable under Section 35EE of the CEA, 1944.

9. The revision application filed by the applicant is dismissed as non-maintainable for lack of jurisdiction.

*Shrawan*  
22/3/22  
(SHRAWAN KUMAR)

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

ORDER No. 26 /2022-ST (WZ) /ASRA/Mumbai DATED 22.3.2022

To,  
M/s Zoetis Pharmaceutical India Pvt. Ltd.,  
31 & 32, 34 Floor, Kalpataru Synergy,  
Opp. Grand Hyatt. Santacruz (East),  
Mumbai-400055.  
Copy to:

- 1) The Commissioner of CGST & CX, Mumbai(West), Ist Floor Mahavir Jain Vidalaya, C D Burfiwala Marg Andheri(W), Mumbai-400058.
- 2) The Commissioner(Appeals) Service Tax-II, 9<sup>th</sup> Floor, Piramal Chambers, Jijibhoy Lane, LalBaug, Parel, Mumbai-400012.
- 3) The Assistant Commissioner of CGST & CX, Concerned division of Mumbai(West) Commissionerate, Ist Floor Mahavir Jain Vidalaya, C D Burfiwala Marg Andheri(W), Mumbai-400058.
- 4) Sr. P.S. to AS (RA), Mumbai
- 5) Guard file