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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, Cuff Parade,  
Mumbai- 400 005

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F NO. 195/07/WZ/2020-RA / 4962 Date of Issue: 03.06.23

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ORDER NO. 33/2023-CX(WZ) /ASRA/MUMBAI DATED 28.7.2023  
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 : M/s. Hindoostan Mills Ltd.

Respondent : The Commissioner of CGST & Cx., Mumbai South.

Subject : Revision Application filed, under Section 35EE of the Central  
Excise Act, 1944 against the Order-in-Appeal No. NA/CGST/A-  
I/MUM/230/19-20 dated 30.10.2019 passed by the  
Commissioner (Appeals-I), GST & C.Ex. Mumbai.

**ORDER**

The Revision Application is filed by M/s. Hindoostan Mills Ltd. (hereinafter as "the Applicant") against the Order-in-Appeal No. NA/CGST/A-I/MUM/230/19-20 dated 30.10.2019 passed by the Commissioner (Appeals-I), GST & C.Ex. Mumbai.

2. Briefly stated, Applicant had filed refund claim on the grounds that they were manufacturers of excisable goods and were availing Cenvat credit of Central Excise duty and Service Tax paid on inputs and input services till 30.06.2017. The Applicant stated that for the period from November 2016 to June 2017, they had paid service tax amounting to Rs. 2,48,920/- to the service provider under reverse charge mechanism under various challans, the Cenvat credit of which remained to be taken in their cenvat account till 30.06.2017. The Applicant further states that the credit of the same also remained to be included in their TRAN-1 filed on 28.09.2017 and revised TRAN-1 filed on 29.11.2017. The Applicant stated that the non availment of Cenvat credit on the disputed amount was only noticed by them in the first week of January 2018 and since they could neither take the Cenvat credit of the said amount nor could they carry forward the same in their original or revised TRAN-1, the Applicant has claimed the refund of the said amount under section 142(3) of the CGST Act, 2017. Adjudicating Authority rejected the refund claim which was further upheld by the Appellate Authority vide impugned OIA.

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 16.05.2023, Shri Krishna Prakash, Authorized signatory, appeared on behalf of the applicant and reiterated earlier submissions. He further submitted that they were eligible to take cenvat credit which could not be taken. He requested to allow the credit and encashment under section 142(3) of CGST Act.

5. Government has carefully gone through the relevant case records available in case files, oral & written submissions/counter objections and perused the impugned Order-in-Original and Order-in-Appeal. It is observed that the issue in the present case is regarding the refund of the credit remained to be taken in the pre-GST era. Applicant has now requested to allow the refund of same and encashment in terms of Section 142(3) of the CGST Act, 2017

6. 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.

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.

7.3 In view of above, Government finds that the issue is regarding the refund of cenvat credit which remained to be taken by the Applicant in their cenvat account and therefore remains outside the jurisdiction of power of revision of this office.

8. Furthermore, Government observes that the Applicant has requested to allow the credit and encashment in terms of Section 142(3) of the CGST Act, 2017. In this regard, Government notes that present proceedings are in exercise of the powers vested in terms of Section 35EE of the Central Excise Act, 1944 and must be exercised within the framework of the Central Excise Act, 1944. The Provisions of the CGST Act, 2017 are not exercisable in revision proceedings. In the result, the revision applications filed by the Applicant are not maintainable under Section 35EE of the Central Excise Act, 1944.

10. In view of the above discussions, the revision applications filed by the Applicant are dismissed as non-maintainable due to lack of jurisdiction.

*Shrawan*  
*28/7/23*

(SHRAWAN KUMAR)

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

ORDER No. 33/2023-CX(WZ) /ASRA/Mumbai Dated 28.7.23

To,

1. M/s. Hindoostan Mills Ltd., 3<sup>rd</sup> Floor , Sir Vithaldas Chambers, 16, Mumbai Samachar Marg, Fort, Mumbai-400001.
2. The Commissioner, CGST& Cx., Mumbai South, 13<sup>th</sup> Floor, Air India Building, Nariman Point, Mumbai-400020.

Copy to:

1. The Commissioner of CGST & Cx. (Appeals I), Mumbai, 9<sup>th</sup> Floor, Piramal Chambers , Jijibhoy Lane, Lalbaug Parel, Mumbai-400012.
2. Sr. P.S. to AS (RA), Mumbai.
3. Guard file.

