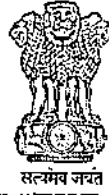**GOVERNMENT OF INDIA**
MINISTRY OF FINANCE
DEPARTMENT OF REVENUE

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. 196/08/WZ/2020 \\१५२8   Date of Issue:२\ .04.2022

ORDER NO. ५७ /2022-ST (WZ) /ASRA/MUMBAI DATED १९ .04.2022 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 Dalberg Development Advisors Pvt. Ltd.,
                     C-5 & 6, 3rd floor, Barodwala Mansion,
                     Dr. Annie Besant Road, Worli,
                     Mumbai – 400 018.

Respondent   :   Commissioner of CGST & Central Excise,
                     Mumbai Central Commissionerate.

Subject   :   Revision Application filed under Section 35EE of the Central Excise Act, 1944 against the Order-in-Appeal No. SM/237/Appeals-II/MC/2020 dated 15.09.2020 passed by the Commissioner (Appeals)-II, CGST & Central Excise, Mumbai.

ORDER

The subject Revision Application has been filed by M/s Dalberg Development Advisors Pvt. Limited (here-in-after referred to as 'the applicant') against the impugned Order-in-Appeal dated 15.09.2020 passed by the Commissioner (Appeals) – II, CGST & Central Excise, Mumbai. The said Order-in-Appeal disposed of an appeal against Order-in-Original dated 11.09.2018 passed by the Assistant Commissioner (Refund), CGST & Central Excise, Mumbai Central, which in turn decided two refund applications filed by the applicant.

2.   Brief facts of the case are that the applicant filed two refund claims under Rule 5 of the Cenvat Credit Rules, 2004 read with notification no.27/2012-CE (NT) dated 18.06.2012. The original sanctioning authority rejected part of the refund claimed on the grounds of it being time barred and also due to a mismatch in the Cenvat figures appearing in the ST-3 returns and the Cenvat Credit Register maintained by the applicant.

3.   Aggrieved, the applicant filed appeal before the Commissioner (Appeals) who partially upheld the decision of the Assistant Commissioner, inasmuch as he disallowed the refund hit by limitation and remanded the issue of mismatch back to the original authority for being decided after verification of the documents produced by the applicant.

4.   Aggrieved by the impugned Order-in-Appeal dated 15.09.2020, the applicant filed the subject Revision Application wherein they inter alia submitted that :-

(a) They had made several efforts to file the refund application online, however they did not receive an acknowledgment despite the system indicating that the application had been submitted;

(b) On realizing that they could still submit applications physically, they did the same on 09.04.2018; that the date on which they submitted the application online should be taken as the actual date of submission;

(c) The Commissioner (Appeals) had considered the period of one year from the date of receipt of payment in convertible foreign exchange instead of the last date of the quarter to which the FIRC pertained;

(d) They were eligible for the refund of accumulated Cenvat credit due to export of services within the time limit and that the said amount had been paid by them to their vendors and hence there was no question of burden or liability to the public;

In light of the above, the applicant submitted that the refund sought by them may be sanctioned at the earliest with interest.

5. Personal hearing in the matter was granted to the applicant on 14.12.2021. Shri Monil Parekh, Chartered Accountant, appeared on behalf of the applicant. He submitted that they tried to file the claim online but could not succeed and that the delay occurred due to the above reason. Further he requested that date of online attempt be taken as the relevant date and finally requested to consider their claim.

6. Government has carefully gone through the relevant records available in case files, the written submissions and also perused the relevant Order-in-Original and the impugned Order-in-Appeal.

7. Government observes that that the dispute in the present case is regarding refund of accumulated Cenvat credit under Rule 5 of the Cenvat Credit Rules, 2004. As stated above, the Commissioner (A) has upheld the order of the original adjudicating authority rejecting those claims which have been time barred and has remanded the rest of the claims to the original authority for being examined afresh. Government notes that at this juncture it is pertinent to examine Section 35EE and Section 35B of the Finance Act, 1994, which provide for Revision by the Central Government and specifies the nature of cases that would lie before the Central Government, respectively. Relevant portions of the same are reproduced below:-

(i)   Section 35EE - Revision by Central Government -

   (1) The Central Government may, on the application of any person aggrieved by any order passed under section 35A, where the order is

*of the nature referred to in the **first proviso to sub-section (1) of section 35B**, annul or modify such order :*

[Provided that the Central Government may in its discretion, refuse to admit an application in respect of an order where the amount of duty or fine. or penalty, determined by such order does not exceed five thousand rupees.]..."

(ii)   Section 35B - Appeals to the Appellate Tribunal

(1) Any person aggrieved by any of the following orders may appeal to the Appellate Tribunal against such order -

(a) a decision or order passed by the ¹[Principal Commissioner of Central Excise or Commissioner of Central Excise] as an adjudicating authority;

(b) an order passed by the ²[Commissioner (Appeals)] under section 35A; .....

....

... [Provided that no appeal shall lie to the Appellate Tribunal and the Appellate Tribunal shall not have jurisdiction to decide any appeal in respect of any order referred to in clause (b) if such order relates to, -

*(a) **a case of loss of goods, where the loss occurs in transit from a factory to a warehouse or to another factory, or from one warehouse to another, or during the course of processing of the goods in a warehouse or in storage, whether in a factory or in a warehouse;***

*(b) **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;***

*(c) **goods exported outside India (except to Nepal or Bhutan) without payment of duty;***

*(d) **credit of any duty allowed to be utilised towards payment of excise duty on final products under the provisions of this Act or the rules made thereunder and such order is passed by the Commissioner (Appeals) on or after the date appointed under section 109 of the Finance (No. 2) Act, 1998:***

[emphasis supplied]

On examining the first proviso to Section 35B of the Finance Act, 1994, Government notes that it does not include cases relating to 'refund of accumulated Cenvat credit'. As discussed above, the instant issue is a dispute that stems from an application for refund of accumulated Cenvat credit under Rule 5 of the Cenvat Credit Rules, 2004. Government notes that this issue is not covered under by the clauses (a) to (d) of the first proviso to Section 35B of the Finance Act, 1994. Thus, Government finds that in terms of Section 35B and Section 35EE of the Finance Act, 1994, it does not have jurisdiction over the dispute involved in the present *lis*.

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

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

ORDER No ДО/2022- ST(WZ) /ASRA/Mumbai dated 19.04.2022

To

M/s Dalberg Development Advisors Pvt. Ltd.,
C-5 & 6, 3rd floor, Barodwala Mansion,
Dr. Annie Besant Road, Worli,
Mumbai – 400 018.

Copy to:

1. The Commissioner of CGST & Central Excise, Mumbai Central Commissionerate.
2. Commissioner (Appeals)-II, CGST & Central Tax, Mumbai.
3. Sr. P.S. to AS (RA), Mumbai.
4. Guard File
5. Notice Board.