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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. 196/12/WZ/2018-RA/1549

Date of Issue: 04.04.2022

ORDER NO. 48/2022-ST(WZ)/ASRA/MUMBAI DATED 29.04.2022
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 Khazanah India Advisors Pvt. Ltd.,
17th Floor, Express Towers, Nariman Point,
Mumbai-400021

Respondent: Commissioner of Central Tax (Appeals-I), Mumbai.

Subject : Revision Application filed, under Section 35EE of the Central
Excise Act, 1944, against the Order-in-Appeal No. IM/CGST/A-
I/MUM/187/17-18 dated 9.02.2018 passed by the
Commissioner of Central Tax (Appeals)-1, Mumbai Zone.

ORDER

This Revision Application has been filed by M/s Khazanah India Advisors Pvt. Ltd., 17th floor, Express Towers, Nariman Point, Mumbai-400021 (hereinafter referred to as "the applicant"), against the Order-in-Appeal No. IM/CGST/A-I/MUM/187/17-18 dated 9.02.2018 passed by the Commissioner of Central Tax (Appeals)-1, Mumbai Zone.

2. The applicant were registered with Service tax for providing taxable service namely 'Banking & Financial Services' as defined under Section 65(105)(zm) read with Section 66 of the Finance Act, 1994. The applicant had filed two rebate claim of Rs.1,87,24,144/- (Rs.91,54,707/- and Rs.95,69,437/-) in terms of Notification 11/2005 dated 19-04-2005 as amended read with Rule 5 of Export of Service Rules, 2005, on the grounds that they have exported taxable service under claim for rebate for the services exported during the period 28-04-2010 to 1-10-2010 and 30-06-2011 to 30-09-2011 as per the said Rules. The Assistant Commissioner, Dn-I, Service Tax-I, Mumbai vide OIO No. DD/R-85/2013 dated 05.06.2013, allowed the rebate claim of Rs.89,44,037/- and rejected the rebate claim for balance amount of Rs.97,87,107/- on the grounds that the applicant has availed ineligible Cenvat credit and utilized the same for payment of Rs.88,29,676/- for the services exported. An amount of Rs.9,50,431/- was rejected due to excess amount of rebate claimed.

3. Aggrieved by the said Order, the applicant filed appeal with the Commissioner Appeal. Commissioner Appeal vide his Order-in-Appeal No. upheld the A.C's Order to the rejection of Rs. 88,29,676/- and allowed the applicant's appeal the extent of Rs.9,50,431/-.

4. Aggrieved by the Commissioner Appeal's Order to the extent of rejecting the amount of Rs.88,29,676/-, the applicant filed the present Revision Application. The applicant was granted personal hearing on 14.12.2021. Shri Mihir Mehta, Adv. and Shri Mohit Raval, Adv appeared online and reiterated their earlier submissions. They stated that credit cannot be questioned in rebate/refund matter. They requested to allow rebate

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 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.

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 KUMAR)

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

ORDER No. 48 /2022-ST (WZ)/ASRA/Mumbai DATED 29.04.2022

To,
M/s Khazanah India Advisors Pvt. Ltd.
17th Floor, Express Towers,
Nariman Point,
Mumbai-400021

Copy to:

1. The Pr. Commissioner of CGST, Mumbai South, Air India Building, Nariman Point, Mumbai-400021.
2. The Commissioner of Central Tax (Appeals-I), Mumbai, 9th Floor, Piramal Chambers, Jijibhoy Lane, Lalbaug, Parel, Mumbai-400012
3. Sr. P.S. to AS (RA), Mumbai
4. Guard file.
5. Notice Board.