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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, Cuff Parade,
Mumbai- 400 005

F NO. 196/07-08/WZ/2018-RA/1924

Date of Issue: 19/05/2022

ORDER NO 53-54/2022-ST (WZ) /ASRA/MUMBAI DATED 17-05-2022
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. Seasaga Enterprises Pvt. Ltd.

Respondent : Pr. Commissioner of CGST, Belapur Commissionerate

Subject : Revision Application filed, under Section 35EE of the Central
Excise Act, 1944 against the Order-in-Appeal No.MKK-437-
438/RGD-APP/2017-18 dated 19.01.2018 passed by the
Commissioner of Central Tax(Appeals), Raigad.

ORDER

This Revision Application is filed by M/s. Seasaga Enterprises Pvt. Ltd. (herein after as "the Applicant") against the 438/RGD-APP/2017-18 dated 19.01.2018 passed by the Commissioner of Central Tax(Appeals), Raigad.

2. The brief facts of the case are that the applicant is engaged in business of exporting Indian frozen foods/Fish. They had filed rebate claims under notification No. 41/2012 ST dated 29.06.2012 for service tax paid on specified services such as Terminal Handling Charges', 'Clearing & Forwarding Charges' Survey Charges, and 'Inspection and Testing Charges, used for export of goods during the period from April, 2014 to March, 2015. Since, the applicant had not fulfilled the pre-condition of proviso (c) of the notification, the refund sanctioning authority rejected the rebate claims of the specified services under Notification No. 41/2012-ST dated 29.06.2012 vide impugned orders. Aggrieved by the impugned order, the Applicant filed appeals with the Commissioner of Central Tax(Appeals), Raigad, who vide Order-in-Appeal No.MKK-437-438/RGD-APP/2017-18 dated 19.01.2018 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 07/14.12.2021. Applicant vide their letter dated 26.11.2021 informed that the grounds of appeal may be taken as their submissions for the PH.

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 dispute is regarding admissibility of rebate of service tax paid on the services utilized in the export of goods by the Applicant for which they have filed rebate claim under Notification No. 41/2012-ST dated 29.06.2012.

6. Government observes that the Notification No.41/2012-ST dated 29.06.2012 has been issued in exercise of the powers conferred by section 93A

of the Finance Act, 1994. The notification is reproduced below for a better appreciation of its ambit.

"In exercise of the powers conferred by section 93A of the Finance Act, 1994 (32 of 1994) (hereinafter referred to as the said Act) and in supersession of the notification of the Government of India in the Ministry of Finance (Department of Revenue) number 52/2011 – Service Tax, dated the 30th December, 2011, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R. 945(E), dated the 30th December, 2011, except as respects things done or omitted to be done before such supersession, the Central Government, on being satisfied that it is necessary in the public interest so to do, hereby grants rebate of service tax paid(hereinafter referred to as rebate) on the taxable services which are received by an exporter of goods (hereinafter referred to as the exporter) and used for export of goods, subject to the extent and manner specified herein below, namely:-"

It is clear from the text that the service tax paid on the taxable services used in export of goods 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 the services utilized in the export of 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. Unmistakably, the category of rebate of service tax paid on taxable service used in exported goods does not fall in the exception category and therefore the assesses aggrieved by these orders cannot obtain relief by filing revision applications under Section 35EE.

8. Government concludes that the present case involves rebate of Service Tax on input services utilized for export of goods and therefore remains outside the jurisdiction of power of revision of this office. In the result, the revision applications filed by the Applicant are not maintainable under Section 35EE of the Central Excise Act, 1944.

9. 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

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ORDER No. /2022-ST (WZ) /ASRA/Mumbai Dated 17-05-2022

To,

M/s. Seasaga Enterprises Pvt. Ltd.,
Plot No. R 25 & R 26, TTC Industrial Area,
Rabale, Navi Mumbai-400070

Copy to:

1. The Pr. Commissioner of CGST & CX, Belapur Commissionerate Ist Floor, CGO Complex CBD Belapur, Navi Mumbai-400614.
2. The Commissioner of Central Tax, Raigad Appeals, 5th Floor, CGO Complex, CBD Belapur, Navi Mumbai-400614.
3. Sr. P.S. to AS (RA), Mumbai.
4. Guard file.