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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, Cuffe Parade,  
Mumbai- 400 005**

F NO. 195/460/16-RA/2584

Date of Issue: 21.06.2022

ORDER NO. 635/2022-ST (WZ) /ASRA/MUMBAI DATED 09.06.2022  
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 Rachna Art Prints Pvt. Ltd.

Respondent : Pr. Commissioner of CGST & CX., Surat Commissionerate.

Subject : Revision Application filed, under Section 35EE of the Central  
Excise Act, 1944 against the Order-in-Appeal No. CCESA-VAD(APP-  
II)/MM29/16-17 dated 24.05.2016 passed by the  
Commissioner(Appeals-II) Vadodara.

**ORDER**

This Revision Application is filed by M/s Rachna Art Prints Pvt. Ltd. (herein after as "the Applicant") against the Order-in-Appeal No. CCESA-VAD(APP-II)/MM29/16-17 dated 24.05.2016 passed by the Commissioner(Appeals-II) Vadodara.

2. The brief facts of the case are that the applicant is M/s. Rachna Art Prints Pvt Ltd., 243/1, 244/B, GIDC, Pandesara, Surat(hereinafter referred to as "the Applicant") is registered vide Membership No. SR/MFG/7157/2010-11 with the Synthetic & Rayon Textiles Export Promotion Council as Manufacturer Exporter under the provisions of the Foreign Trade Policy. Applicant vide their letter dtd. 01.10.2013 filed refund application for refunding of S. Tax amounting to Rs. 1,81,983/-. The refund application was filed on 01.10.2013 in view of Notification No. 41/2012-ST dated 29.06.2012 in respect of Service tax paid on Insurance Auxiliary Service, Banking & Financial Service, C & F Service, CHA service, Courier Service. The adjudicating authority vide its order No. Div-V/Refund/02/2014-15 dated 31.12.2014 sanctioned the refund claim. Aggrieved by the impugned order, the Department filed appeal with the Commissioner(Appeals-II) Vadodara., who vide Order-in-Appeal No. CCESA-VAD(APP-II)/MM29/16-17 dated 24.05.2016 allowed their appeal and set aside the Order-in-Original.

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 26.10.2021, Ms. Deepali Kamble, Advocate appeared online on behalf of the applicant and submitted that original authority has correctly allowed rebate. Commissioner Appeal has erred in rejecting the same. She requested to allow her application.

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 "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

ORDER No. 635/2022-ST (WZ) /ASRA/Mumbai Dated 09.06.2022

To,

1. M/s Rachna Art Prints Pvt Ltd.,  
234/1-B, GIDC, Pandesara, Surat-394221.
2. The Pr. Commissioner of CGST & CX, New Central Excise Building,  
Chowk Bazaar, Surat -395001.

Copy to:

1. The Commissioner (Appeals-II), Central Excise, Customs & Service Tax,  
Vadodara Appeals-II, 4<sup>th</sup> Floor, Central Excise Building, Opp. Gandhi  
Baug, Chowk Bazar, Surat-395001.
3. The Assistant Commissioner, Central Excise, Customs & Service  
Tax, Division-V, Surat-I.
2. Sr. P.S. to AS (RA), Mumbai.
- ~~3. Guard file.~~