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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. 196/10/WZ/18-RA

F NO. 196/11/WZ/18-RA

2635

Date of Issue: 24.06.2022

ORDER NO. 68-69 /2022-CX (WZ)/ASRA/MUMBAI DATED 22-6-2022
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 Citicorp Services India Pvt. Ltd.

Respondent : Commissioner of GST and CX. (Appeals-II), Mumbai.

Subject : Revision Application filed, under section 35EE of the Central
Excise Act, 1944 against the Order-in-Appeal No. PK/287 to
293/ME/2017 dated 30-11-2017 passed by the Commissioner
of Customs of GST and CX. (Appeals-II), Mumbai.

ORDER

This Revision Application is filed by M/s Citicorp Services India Pvt. Ltd. (herein after referred to as "the Applicant") having office at 8th Floor, First International Financial Centre (FIFC), Plot No. C-54 & C-55, G-Block, Bandra Kurla Complex, Bandra (East), Mumbai-400098 against the Order-in-Appeal No. PK/287 to 293/ME/2017 dated 30-11-2017 passed by the Commissioner of Customs of GST and CX. (Appeals-II), Mumbai.

2. The brief facts of the case are that the Applicant having Service Tax registration, have filed rebate claims amounting to Rs.4,75,42,263/- and Rs.1,32,87,052/- for the period November 2010 to February 2011 and April 2011 to September 2011 respectively, for the service tax paid on Services exported viz 'Banking and other Financial Service' under Export of Services Rule, 2005 read with Notification No.11/2005-ST dated 19.4.2005. The said rebate claims were filed on 30.11.2011 and 16.02.2013. On scrutiny of the rebate claims discrepancies were noticed and SCN was issued to the applicant as to why the claim should not be rejected. In respect of the rebate claim amounting to Rs.4,75,42,263/-, the refund sanctioning authority vide Order in Original No. Refund/SSS/44/2013 dated 10.05.2013 sanctioned the rebate claim amounting to Rs.3,49,62,198/- and rejected the rebate claim of Rs. 1,25,80,065/-. In respect to the second claim amounting to Rs.1,32,87,052/-, the refund sanctioning authority vide OIO No. 38/Refund-II/AKP/2015-16 dated 8th June, 2015, rejected the rebate claim of Rs. 1,32,87,052/-. Aggrieved by the said Orders, to the extent of rejected amount, the applicant filed appeal with the Commissioner Appeals.

3. Commissioner Appeals vide OIA No. PK/287-293/ME/2017 dated 06-12-2017 partially allowed the applicant's appeal. The applicant has filed the impugned Revision Application against the Commissioner Appeal's Order.

4. Personal hearing in this case was held on 02.03.2022. Mr. Sanjeev Nair, Advocate appeared online and reiterated earlier submissions. He informed that an additional written submissions has been made. He further submitted that substantial part of FIRC have been traced and brought on record.

5. Government has carefully gone through the relevant case records, perused the impugned Orders-in-Original, Orders-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 claimed of the amount of tax paid on services 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. The relevant portion of the Notification is reproduced below:

"Notification No. 11/2005-Service Tax

*In exercise of the powers conferred by rule 5 of the Export of Service Rules, 2005 (hereinafter referred to as the said rules), insofar as it relates to export of taxable services to the countries other than Nepal and Bhutan, the Central Government hereby **directs that there shall be granted rebate of the whole of the service tax and cess paid on all taxable services exported in terms of rule 3 of the said rules, to any country other than Nepal and Bhutan**, subject to the conditions, limitations and procedures specified hereinafter, -....."*

5.1. 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)."

5.2. 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 of the amount of tax paid on Export of Services as claimed by the applicant and this category does not fall in the aforesaid exception category and the applicant aggrieved by such order must file appeals before the Appellate Tribunal.

6. 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.

7. In view of the above discussions, the revision application filed by the applicant is dismissed as non-maintainable due to lack of jurisdiction.

Shrawan
22/6/22
(SHRAWAN KUMAR)

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

68-69

ORDER No. /2022-ST (WZ)/ASRA/Mumbai DATED 22.06.2022

To,
M/s Citicorp Services India Pvt. Ltd.,
8th Floor, First International Financial Centre (FIFC),
Plot No. C-54 & C-55, G-Block,
Bandra Kurla Complex, Bandra (East),
Mumbai-400098

Copy to:

1. The Pr. Commissioner of CGST & C.Ex, Mumbai East Commissionerate, 9th Floor, Lotus Infocentre, Parel, Mumbai-400012
2. The Commissioner of CGST & Cx (Appeals-II), Mumbai, 3rd Floor, Utpad Shulk Bhavan, Plot No. C-24, Sector E, bandra-Kurla Complex, Bandra (East), Mumbai-51
3. Sr. P.S. to AS (RA), Mumbai
4. Guard file
5. Notice Board.