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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.196/28-31/SZ/2018 | 2736

Date of Issue: 30.06.2022

ORDER NO. 75-78/2022-ST(SZ)/ASRA/MUMBAI DATED 2\ .06.2022 OF  
THE GOVERNMENT OF INDIA PASSED BY SHRI SHRAWAN KUMAR,  
PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO  
THE OF INDIA, UNDER SECTION 35EE OF THE CENTRAL EXCISE ACT,  
1944.

Applicants : M/s Maami foods Pvt Ltd,  
133/2, Pullalkotti Road,  
Viradhnagar-626001, Tamil Nadu

Respondents : Commissioner of CGST, Madurai


Subject : Revision Application filed, under Section 35EE of the Central  
Excise Act, 1944 against the Order-in-Appeal No. MAD-CEX-  
000-APP- 278 to 281-18 dated 09.08.2018 passed by the  
Commissioner GST and Central Excise (Appeals), Coimbatore.



ORDER

These Revision Applications are filed by M/s Maami foods Pvt Ltd, 133/2, Pullalkotti Road, Virudhnagar-626001, Tamil Nadu (hereinafter referred to as "the Applicant") against the Orders-in-Appeal No. MAD-CEX-000-APP- 278 to 281-18 dated 09.08.2018 passed by the Commissioner GST and Central Excise (Appeals), Coimbatore.

2. The facts of the cases in brief are that the applicant, are engaged in the export of Spices and Miscellaneous edible preparations, classifiable under Tariff heading Nos 9,11 and 19 of the 1st Schedule to the Central Excise Tariff Act, 1985. The applicant had filed four rebate claims under Notification No.41/2012-ST, dated 29.06.2012 claiming refund of Service Tax paid on Custom House Agent Service, Clearing & Forwarding Agent Service and Banking & Financial Services used in relation of export of their final products, during the periods July 2016 to September 2016, October 2016 to December 2016, January 2017 to March 2017 and April 2017 to June 2017. Pursuant to scrutiny of the above claims and issue of SCN for partial rejection of the claims on the ground of non fulfillment of conditions of Para (1) (c) of the Notification 41/2012-ST dated 29.06.2012, some amounts being time barred and amounts paid towards Swachh Bharat Cess(SBC) and Krishi Kalyan Cess(KKC) being beyond the scope of the above Notification, the Refund Sanctioning Authority sanctioned part of the claims after rejecting certain amounts on the above grounds vide the impugned Orders-in-Appeal, the details of which are as under:



OIO No	Period of claim	Amount claimed	Amount rejected (Rs)				Amount sanctioned
			SBB + KKC	Conditions of Para 1(c) of Notification not fulfilled	Time barred	Excess claim	
13/2017	07/2016 to 09/2016	20,665	1164	3300	-	6	16195
17/2017	10/2016 to 12/2016	15,663	1018	-	490	-	14155



14/2017	01/2017 to 03/2017	29,261	1960	-	-	-	27300
12/2017	04/2017 to 06/2017	20,002	1338	-	-	-	18664

3. Being aggrieved by the Orders-in Original, the applicant filed appeals before the Commissioner GST and Central Excise (Appeals), Coimbatore.. The Appellate Authority vide Order in Appeal No. MAD-CEX-000-APP- 278 to 281-18 dated 09.08.2018 rejected the appeal and upheld the Orders-in-Original. The Appellate Authority while passing the impugned Orders-in-Appeal observed as under:

3.1 Any refund claim under section 93A of the Finance Act, 1994 can be granted only to the extent and manner prescribed in the Notification issued in exercise of powers conferred by this section. Notification 41/2012-ST, 29.06.2012 is one such notification and hence if SBC and KKC are to be refunded, they should find place in the said Notification and the same has not been mentioned in the said Notification

3.2 That under Notification No. 41/2012-ST, Education Cess & Secondary Education Cess were refunded alongwith Service Tax element on the basis Board's Circular No. 134/3/2011-ST. dated 08.004.2011, wherein it is held that "since Education Cess is levied collected as percentage of service tax, when and wherever service tax is NIL by virtue of exemption, Education Cess would also be NIL. However unlike Education Cess & Secondary Education Cess, SBC and KKC are not collected as a percentage Tax, rather they are collected as a percentage on the value of service. Hence the analogy of Board's circular cannot be implied in the present scenario for refund of SBC & KKC under Notification No.41/2012-ST in the absence of explicit mention of the same.

3.3 As regards the violation of para 1(c) of the Notification No.41/2012-ST dated 29.06.2012 by the applicant, the Appellate Authority observed that in



the instant case the difference between the amount of rebate under the procedure specified in para 2 and para 3 is less than rebate available under para 3 of the said Notification the applicant is not entitled to the claim of Rs. 3,300/- available under Para 3 of Notification No 41/2012-ST dated 29.06.2012. It is the responsibility of the exporter to see whether a claim can be made under para 3 or not by applying the formula. If the formula is not satisfied the claim itself should not be made. Non fulfilment of the condition cannot be treated as a procedural lapse as it is a mandatory condition.

3.4 Para 3(g) of Notification No 41/2012-ST dated 29.06.2012 states that the claim for rebate of service tax paid on the specified services used for export of goods shall be filled within one year from the date of export of the said goods, which has not been adhered to in the instant case.

4. Being aggrieved by the impugned Order-in-Appeal, the applicant filed instant Revision Application on the following grounds:-

4.1 That Notification No 41/2012-ST, does not prescribe that the 20% difference has to be worked out shipping bill wise and hence the point which has been raised by the original authority and upheld in OIA is without authority of law and based on wrong and imaginary interpretation of wordings of notifications which were not intended by the legislature.

4.2 That the working of 20% difference by the sanctioning authority by subtracting the amount available in Para 2 from the rebate amount claimed under Para 3 is against the order of CESTAT in the case of Commissioner of Central Excise and Service Tax, Salem vs GTP Exports [2017(48)STR 263(Tri-Chen)] and not in conformity with the provisions of Notification No. 41/2012-ST dated 29.06.2012 Therefore, it is submitted that the difference of 20% has to be worked out based on absolute value and not based on subtracted value.

4.3 The SBC and KKC are levied and collected as service tax and is collected under section 119 of Chapter VI of Finance Act 2015.





4.4 That as per the provisions of sec. 119(2) and (5) of Chapter VI of Finance Act 2015, and section 161(2) and (5) of Finance Act 2016 the Swachh Bharat Cess and Krishi Kalyan Cess are levied and collected only as service tax respectively, the rebate of service tax mentioned in the Noti. No. 41/2012 ST includes Swachh Bharat Cess and Krishi Kalyan Cess.

4.5 That earlier to the abolition of Education Cess and Secondary and Higher Education Cess, the same were granted as rebate, even though there was no mention of the Education Cess in the Noti. No. 41/2012 ST and the same principle should be followed for Swachh Bharat Cess and Krishi Kalyan Cess also.

4.6 That the adjudicating authority has failed to observe that in Notification No. 39/2012-ST, the service tax has been defined as leviable under Section 66/66B of Finance Act, 1994 and also the Cess leviable under provisions of Section 119(2) of Finance Act 2015 and under the provisions of section 161(2) of FA 2016 are eligible for rebate. But no such definition for service tax and Cess has been given under Notification No.41/2012-ST. Since a general term service tax has been mentioned in the Noti. No.41/2012 ST, and not as levied under sec. 66/66B the service tax allowed for rebate under this notification includes not only service tax leviable under section 66/66B of Finance Act, 1994 but also the Cess payable under section 119(2) of Finance Act 2015 and under sec. 161(2) of FA 2016 and collected as service tax.

4.7 That the CBEC has issued circular No. 134/3/2011-ST dated 8/4/2011 clarifying that when policy of Govt. is to grant exemption from whole of service tax, it will include Education Cess and secondary higher Education Cess also. In Para 3 of the circular it has been clarified that the Education Cess has also to be refunded to Exporters along with service tax. Hence this clarification is equally applicable to SBC and KKC also.







The applicant has relied upon the following case laws in support of their

- 1) Hyundai Motor India Engineering Pvt Ltd., vs CCE and ST [2015 (39) STR 1019(Tri-Bang)]
- 2) CCE vs Eastern Industries Pvt Ltd. [2011 (22) STR 223 (Tri)]

4.11 That liberal interpretation has to be applied as the Notification No. 41/2012 ST is a beneficial or promotional exemption by way of rebate of service tax paid on input service used in the export of goods and it is also trite law that an exemption is to be granted unless it is expressly taken away.

The applicant has relied upon the following case laws in support of their contention

- i) CST vs Industrial Coal Enterprises [AIR 1999 SC 1324]
- ii) CC vs M.Ambal and Company [2011(260) ELT 487 (SC)]
- iii) CCE vs. Favorite Industries [2012(278) ELT 145 (SC)]

4.12 That the Government of India has enshrined their avowed policy in CBEC Circular No.120/01/2010 ST Dt.19/01/2010 issued from File F.No.354/268/2009 TRU to zero rate export. Therefore, denial of rebate when substantive requirements have been fulfilled will negate the above policy of the Government.

4.13 That it is a well settled in law that substantial benefit shall not be denied for procedural violation. As the proviso (c) to Para 1 of Notification.No.41/2012-ST is only a procedure (not condition) prescribed for filing rebate claim, the same should not be taken as valid reason for denial of rebate.

The applicant has relied upon the following case laws in support of their contention

- i) Reliance Chemotex vs. CCEx [2010 (253) ELT 101 (CESTAT)]
- ii) Omsons Cookware Pvt. Ltd. [2011 (268) ELT 111 (GOI)]
- iii) Suksha International vs. UOI [1989 (39) ELT 503 (SC)]
- iv) of Union of India vs. A.V.Narasimhalu [1983 (13) ELT 1534 (SC)]
- v) Formica India vs. Collector of Central Excise, [1995 (77) ELT 511 (SC)]
- vi) Birla VXL Ltd vs. CCEx [1998 (99) ELT 387 (Tri)]
- vii) CCE vs. TI Cycles [1993 (66) ELT 497 (Tri)]
- viii) Atma Tube Products [1998 (103) ELT 270 (Tri)]
- ix) Creative Mobus [2003 ((58) RLT 111 (GOI)]



- x) Ikea Trading India Ltd [2003 (157) ELT 359 (GOI)]
- xi) SANKET Industries Ltd. [2011 (268) ELT 125 (GOI)]
- xii) Leighton Contractors (India) Pvt.Ltd. [2011 (267) ELT 422 (GOI)].
- xiii) Alcon Biosciences Pvt Ltd [2012 (281) ELT 732 (GOI)]
- xiv) Mangalore Chemicals & Fertilizers vs. UOI [1991 (55) ELT 437 (SC) 2]
- xv) Breach Candy Hospital Vs. CCEx [2000 (118) ELT 271 (Tri-LB)]

5. Personal hearing in this case was scheduled on 14.12.2021. Shri B. Ganesan, Consultant appeared online for hearing on behalf of the applicant and stated that rebate of SBC and KKC be sanctioned to them and on the point of 20% difference, he submitted that the correct method is not each shipping bill wise.

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

6.1 Government observes that the dispute in the present case is regarding *admissibility of rebate of service tax paid on input services used in relation to goods exported by the applicant*. The Appellate Authority has upheld the order of the original adjudicating authority rejecting the claim for rebate.

6.2 Government finds that at this juncture it is pertinent to examine Section 86 of the Finance Act, 1994 which deals with appeals to the Hon'ble Tribunal; 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)."*

[Emphasis supplied]

6.3. Sub-Section (1) of Section 86 of the Finance Act, 1994 stipulates that all appeals against order 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 Central Excise Act, 1944. It is pertinent to note that although Section 93A of the Finance Act, 1994 provided for grant of rebate on input services used in rendering taxable services which are exported as well as on manufactured goods, the exception carved out in Section 86 of the Finance Act, 1994 granting jurisdiction for revision to the Central Government is only in respect of rebate of inputs/input services used in export of services and does not apply to cases where goods have been exported. Since this category of rebate of input services used in the export of goods does not fall in the exception category, the assessee aggrieved by these orders must file appeals before the Appellate Tribunal

7. As discussed above, the instant issue pertains to rebate of service tax paid on the services used in relation to goods exported and inputs/input services used for providing the same and hence Government



notes that in terms of Section 86 of the Finance Act, 1994, it does not have jurisdiction over any matter relating to the same.

8. In view of the above, Government dismisses the subject Revision Applications against Orders-in-Appeal No. MAD-CEX-000-APP- 278 to 281-18 dated 09.08.2018 passed by the Commissioner GST and Central Excise (Appeals), Coimbatore, as the same are non-maintainable due to lack of jurisdiction.

*Shrawan*  
21/06/22  
(SHRAWAN KUMAR)

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

ORDER No. ~~45~~<sup>38</sup>/2022-~~67~~(SZ)/ASRA/Mumbai DATED 21.06.2022

To,  
M/s Maami Foods Pvt Ltd,  
133/2, Pullalkotti Road,  
Virudhnagar-626001, Tamil Nadu

Copy to :

1. The Commissioner of CGST, Madurai, C.R.Building, B.B Kulam, Madurai 625 002
2. The Commissioner of CGST, (Coimbatore Appeals), No 6/7, A.T.D. Street, Race Course Road, Coimbatore 641 018
3. Sr P.S. to AS (RA), Mumbai.
4. Guard File.
5. Spare copy.

