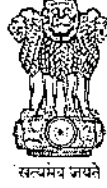


REGISTERED SPEED POST AD



**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. 196/28/ST/16-RA, 196/08-A/ST/16-RA

4336

Date of Issue: 28.09.2022

ORDER NO. 83-84 /2022-ST(WZ)/ASRA/MUMBAI DATED 22.09.2022  
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. Convergys India Services Private Limited.

Respondent : The Commissioner of CGST & Central Tax, Thane  
Commissionerate

Subject : Revision Application filed under Section 35EE of the Central Excise  
Act, 1944 against Orders-in-Appeal No. MUM-SVTAX-002-APP-48-  
16-17 dated 13.04.2016 and MUM-SVTAX-002-APP-217-15-16  
dated 07.03.2016 passed by the Commissioner(Appeals) Service  
Tax-II, Mumbai.

**ORDER**

These revision applications have been filed by M/s. Convergys India Services Private Limited situated at 4<sup>th</sup> Floor, Maxus Mall, Fatak Road, near Timba Hospital, Bhayandar(West)-Thane-401101 (hereinafter referred to as "the applicant") against Orders-in-Appeal No. MUM-SVTAX-002-APP-48-16-17 dated 13.04.2016 and MUM-SVTAX-002-APP-217-15-16 dated 07.03.2016 passed by the Commissioner(Appeals) Service Tax-II, Mumbai.

2.

a) F.No.- 196/08-A/ST/16-RA

Brief facts of the case are that the applicant had filed application on 29.06.2009 for rebate of service tax of Rs.1,85,57,748/- paid on output services exported during the period October 2008 to December 2008 under NF-11/2005-ST dated 19.04.2005. The adjudicating authority vide the impugned order has sanctioned rebate claim of Rs. 1,72,47,253/- and rejected the rest of Rs. 13,10,495/- (credit of Rs.3,84,062/- not being admissible under Rule 3 of CCR and Rs.9,26,433/- being credit for the period prior to 01.03.2006. Being aggrieved by the aforesaid order-in-original the applicant filed appeal before the the Commissioner(Appeals) Service Tax-II, Mumbai, who vide Order in Appeal No. MUM-SVTAX-002-APP-217-15-16 dated 07.03.2016 allowed their appeal partially.

b) F. No. 196/28/ST/16-RA

The facts in brief are that the applicant had filed rebate application on 29.03.2012 for refund of service tax of Rs.34,55,870/- paid on output services exported by them during March, 2011 on payment of service tax from credit account in terms of Notification No. 11/2005-ST dated 19.04.2005. On scrutiny some discrepancies were noticed, which were communicated to the applicant vide letter dated 18.06.2012 and 06.08.2012 for clarification. The Adjudicating Authority has rejected the entire claim on the ground that the Condition 2(a) of the said NF was not fulfilled by the applicant in as much as the FIRCS submitted by the applicant did not bear export invoice details and in some cases, the purpose of remittance did not correspond to the export invoice and also for non-submission of invoice copies for verification, invoice of service provider not in the name of their registered premises etc. Being aggrieved by the aforesaid order-in-original the applicant filed appeal before the the Commissioner(Appeals) Service Tax-II, Mumbai, who vide

Order in Appeal No. MUM-SVTAX-002-APP-48-16-17 dated 13.04.2016 rejected their appeal.

3. Being aggrieved and dissatisfied with the impugned orders 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 scheduled on 15.07.2021, 22.07.2021, 14.09.2021, 21.09.2021 and 16.12.2021. However, neither the applicant nor respondent appeared for the personal hearing on the appointed dates, or made any correspondence seeking adjournment of hearings despite having been afforded the opportunity on more than three different occasions and therefore, Government proceeds to decide these cases on merits on the basis of available records.

5. Government has carefully gone through the relevant case records, perused the impugned Order-in-Appeal, the Order-in-Original, the revision application and the submissions filed by the applicant. It is observed that the dispute is regarding admissibility of rebate of service tax paid on output taxable service rendered by the applicant for which they have filed claim under Rule 5 of the Export of Services Rules, 2005 read with Notification No. 11/2005-ST dated 19.04.2005.

6. Government observes that the Notification No. 11/2005-ST dated 19.04.2005 has been issued in exercise of the powers conferred by Rule 5 of the Export of Services Rules, 2005. The preamble of the notification is reproduced below for a better appreciation of its ambit.

*"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, -"*

It is clear from the text that the service tax and cess paid on the output services exported 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 taxable services which are exported.*

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. Unmistakeably, the category of rebate of service tax paid on taxable service exported does not fall in the exception category and therefore the assessee aggrieved by these orders cannot obtain relief by filing revision applications under Section 35EE.

7.3 The Notification No. 11/2005-ST dated 19.04.2005 has been issued specifically for grant of rebate of service tax paid on taxable services which have been exported. Therefore, the remedy for an applicant who is aggrieved by an order passed by Commissioner(Appeals) involving Notification No. 11/2005-ST dated 19.04.2005 would lie before the Appellate Tribunal; i.e. the Hon'ble CESTAT. It is observed that this issue has been discussed by the Hon'ble CESTAT in Vodafone Mobile Services Ltd. vs. Commissioner of Service Tax, Pune[2016(45)STR 301(Tri-Mum)].

"5. I find that though as per the provision .....

*From the above Section 86 there is explicit provision by which the order relating to grant of rebate of service tax on input, service tax or rebate of duty paid on input have been carved out for appeal before this Tribunal and in such cases the assessee is required to file revisionary application under Section 35EE. However, in the said provision, the rebate of service tax paid on output service has not been carved out therefore present appeal on the issue of rebate of service tax paid on output service exported out of India is maintainable before this Tribunal. As regard the contention of the ld. AR that Section 35EE is applicable in the service tax matters by virtue of Section 83, I am of the view that though Section 35EE is applicable but only for the cases related to rebate of service tax paid on input service or duty paid on inputs which were used in the export of services. Since there is independent provision under Section 86 in such cases Section 35B need not to be resorted. Therefore, the present appeals are maintainable....."*

8. Government concludes that since the present case involves rebate of service tax paid on taxable services which have been exported, the matter is beyond the scope of the revisionary powers vested in the Central Government under Section 35EE of the CEA, 1944 read with the proviso to sub-section (1) of Section 86 of the

FA, 1994. In the result, the revision application filed by the applicant is not maintainable under Section 35EE of the CEA, 1944.

9. These revision applications filed by the applicant are dismissed as non-maintainable for lack of jurisdiction.

*Shrawan Kumar*  
22/9/22

( SHRAWAN KUMAR )  
Principal Commissioner & Ex-Officio  
Additional Secretary to Government of India

ORDER No. 83-84 /2022-ST (WZ) /ASRA/Mumbai DATED 22.09.2022

To,

1. M/s. Convergys India Services Private Limited  
4<sup>th</sup> Floor, Maxus Mall, Fatak Road, near Timba Hospital,  
Bhayandar(West)-Thane-401101.
2. Mr. Atul Kumar Gupta,FCA  
C/o M/s. APRA & Associates,  
VII Floor, Udyog Minar Vanijya Nikunj  
Income Tax Bldg., HSIIDC Complex, Udyog Vihar, Phase-V, Gurgaon-  
122016.

Copy to:

- 1) The Commissioner of CGST & CX, CGST Bhavan,Accel House,Road No. 22,  
Wagle Industrial Estate, Thane(W), Thane-400604.
- 2) The Commissioner(Appeals) Service Tax-II, Mumbai, 9<sup>th</sup> Floor ,Piramal  
Chambers, Jijibhoy Lane, Lalbaug, Parel, Mumbai- 400012.
- 3) Sr. P.S. to AS (RA), Mumbai
- 4) Guard file