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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. 196/04/ST/17-RA /4315

Date of Issue: 28.09.22

ORDER NO. 85 /2022-ST (WZ) /ASRA/MUMBAI DATED 26.09.2022
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. Ultratech Cement Ltd.

Respondent : The Commissioner of CGST, Bhavnagar

Subject : Revision Application filed, under Section 35EE of the Central
Excise Act, 1944 against the Order-in-Appeal No. BHV-EXCUS-000-
APP-213-16-17 dated 29.11.2016 passed by the Commissioner
(Appeals-III), Rajkot.

ORDER

This Revision Application is filed by M/s. Ultratech Cement Ltd. situated at P.O. Kovaya, Tal. Rajula, Dist. Amreli-365541 (hereinafter as "the Applicant") against the Order-in-Appeal No. BHV-EXCUS-000-APP-213-16-17 dated 29.11.2016 passed by the Commissioner (Appeals-III), Rajkot.

2. The facts of the case are that the applicant are engaged in the manufacturing of cement classifiable under Chapter 25 of the first schedule to the Central Excise Tariff Act, 1985. The applicant also exports the same and are holding Central Excise and Service Tax Registration. The applicant had filed a refund claim of Rs.6,67,766/- under Notification No.41/2012-ST dated 29.06.2012 (hereinafter referred to as "the said Notification") on 22.07.2014 along with the relevant documents for refund of Service tax paid on services received by them during the period from April - 2014 to June 2014 towards export goods. The refund claim was partly sanctioned for the amount of Rs. 4,06,351/- and rejected the refund amount of Rs. 2,61,412/- vide Order In-Original No. R/49/2014 dated 14.11.2014 on the ground that conditions laid down under para 1 (c) of the said notification were not fulfilled in respect of 4 shipping bills. Being aggrieved with the said order, the applicant preferred appeal before Commissioner (Appeals), Central Excise, Rajkot who vide Order-In-Appeal No. BHV EXCUS-000-APP-024-15-16 dated 31.07.2015 remanded the matter back to the lower adjudicating authority with observation (i) that the pleadings of the applicant regarding consideration of entire quarter and not to consider each and every shipping bill, their claim for eligibility of rebate under para 2 of the said notification, etc. have not been considered/discussed in the impugned order; and (ii) as to how and why the claim in respect of 4 shipping bills was not filed before the proper authority as laid down under the said notification. Consequent to the OIA dated 31.07.2015, The adjudicating authority vide order dated 05.11.2015 again rejected the refund claim of Rs. 2,61,412/-. Aggrieved by the aforesaid order, the Applicant filed appeal with

the Commissioner (Appeals-III), Rajkot, who vide Order-in-Appeal No. BHV-EXCUS-000-APP-213-16-17 dated 29.11.2016 allowed their appeal partially.

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 scheduled on 15.07.2021, 22.07.2021, 01.09.2021, 07.09.2021 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 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

ORDER No. 85 /2022-ST (WZ) /ASRA/Mumbai Dated 26.09.2022

To,

1. M/s. Ultratech Cement Ltd.
P.O. Kovaya, Tal. Rajula,
Dist. Amreli, Gujrat-365541.
2. Shri Lakshmi Kumaran & Sridharan,
2nd Floor, B&C Wing, Cnergy, Appa Saheb Marathe Marg,
Prabhadevi, Mumbai-400025.

Copy to:

1. The Commissioner of CGST & CX, "Siddhi Sadan", Building Plot No. 67-76/B1, Narayan Bhai Upadhyay Marg, Kalubha Road, Bhavnagar-364001.
2. The Commissioner(Appeals-III), Central Excise, 2nd Floor, Central Excise Bhavan, Race course ring road, Rajkot- 360001.
3. Sr P.S. to AS (RA), Mumbai.
4. Guard file.