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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, Cuff Parade,  
Mumbai- 400 005

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F NO. 196/07/WZ/2022-RA / ~~2484~~ 2490 Date of Issue: 12/12/2022

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ORDER NO. 88 /2022-ST (WZ) /ASRA/MUMBAI DATED 12/12/2022  
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 : Mr. Cipriano Fiedade Afonso proprietor of M/s. Alfonso Caterers

Respondent : The Pr. Commissioner of CGST, Goa Commissionerate.

Subject : Revision Application filed, under Section 35EE of the Central  
Excise Act, 1944 against the Order-in-Appeal No. GOA-ST-APP  
(VNT)-032-2022-23 dated 26.08.2022 passed by the  
Commissioner (Appeals), Goa.

**ORDER**

This Revision Application is filed by Mr. Cipriano Fiedade Afonso proprietor of M/s. Alfonso Caterers (hereinafter as "the Applicant") against the Order-in-Appeal No. GOA-ST-APP (VNT)-032-2022-23 dated 26.08.2022 passed by the Commissioner (Appeals), Goa.

2. The facts of the case are that the applicant, holder of GSTIN-30ADUPA9187BIZM, was not registered under erstwhile service tax regime. Based on the third-party data, the applicant was requested to submit documents/data for F.Y. 2015-16 onwards for scrutiny. Statement of the Applicant was also recorded on 01.04.2021 wherein he stated that he was engaged in providing 'outdoor Catering Service' and the taxable value shown in income tax returns as sale of service are payment/contract receipt on account of providing service. Further, applicant submitted the copies of income tax returns for the said period. Based on the document the demand of Rs. 16,17,239/- for the period April 2015 to June 2017 was alleged against the Applicant vide show cause notice issued dated 22.04.2021. The said SCN was adjudicated vide OIO No. 09/21-22/AC/SKS/ST/Div-II wherein the demand of Service tax for Fy 2015-16 to Fy 2017-18(Upto June 2017) was confirmed under the proviso to sub section (1) of erstwhile section 73 of the Finance act, 1994 along with interest and penalty. Aggrieved by the aforesaid order, the Applicant filed appeal with the Commissioner (Appeals), Goa, who vide Order-in-Appeal No. GOA-ST-APP (VNT)-032-2022-23 dated 26.08.2022 rejected their appeal on the ground that applicant has not paid the pre-deposit required under Section 35F of the Central Excise Act, 1944 read with Section 85 of the Act.

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. 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 the applicability of service tax on the services rendered by the applicant.

5. 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.

6. 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. 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.

8. Government concludes that the present case involves the applicability of service tax on the services rendered by the applicant 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. 88 /2022-ST (WZ) /ASRA/Mumbai Dated 2.12.2022

To,

1. Mr. Cipriano Fiedade Afonso proprietor of M/s. Alfonso Caterers, H.No. 32/1, Azossin Church Colony, P.O. Neura, North Goa, Goa-403104.
2. The Commissioner of CGST, GST BHAVAN, EDC COMPLEX, PLOT NO. 6, PATTO PANAJI- GOA-403 001.

Copy to:

1. The Commissioner(Appeals), Central Tax(Goa), 4<sup>th</sup> Floor, GST Bhavan, EDC COMPLEX, PLOT NO. 6, PATTO, PANAJI- GOA-403 001.
2. Sr. P.S. to AS (RA), Mumbai.
3. Guard file.