CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHENNAI

REGIONAL BENCH – COURT No. I

Service Tax Appeal Nos. 41302 & 41303 of 2017

(Arising out of Order-in-Appeal Nos. 94&95/2017 (STA-I) dated 28.02.2017 passed by Commissioner of Service Tax (Appeals-I), Newry Towers, 2054/1, II Avenue, 12th Main Road, Anna Nagar, Chennai – 600 040)

With

Service Tax Appeal Nos. 42073 to 42077 of 2017

(Arising out of Order-in-Appeal Nos. 299-303/2017 (STA-I) dated 14.06.2017 passed by Commissioner of Service Tax (Appeals-I), Newry Towers, 2054/1, II Avenue, 12th Main Road, Anna Nagar, Chennai – 600 040)

And

Service Tax Appeal No. 42070, 42073 & 42074 of 2018

(Arising out of Order-in-Appeal Nos. 170-172/2017 (STA-I) dated 28.03.2017 passed by Commissioner of Service Tax (Appeals-I), Newry Towers, 2054/1, II Avenue, 12th Main Road, Anna Nagar, Chennai – 600 040)

M/s. Saint Gobain Research India Limited (SGRIL) **...Appellant**
7th Floor, Sigappi Achi Building,
18/3, Rukmani Lakshmipathy Road,
Egmore,
Chennai - 600 008.

Versus

Commissioner of GST and Central Excise **...Respondent**
Chennai Outer Commissionerate,
Newry Towers,
No. 2054-I, II Avenue, 12th Main Road,
Anna Nagar,
Chennai – 600 040.

APPEARANCE:

For the Appellant : Shri S. Muthuvenkataraman, Advocate
For the Respondent : Smt. O.M. Reena, Authorised Representative
Smt. Anandalakshmi Ganeshram, Authorised Representative

CORAM:
HON'BLE MR. VASA SESHAGIRI RAO, MEMBER (TECHNICAL)
HON'BLE MR. AJAYAN T.V., MEMBER (JUDICIAL)

FINAL ORDER Nos. 40174-40183 / 2025

DATE OF HEARING : 17.01.2025
DATE OF DECISION : 06.02.2025

Per Mr. VASA SESHAGIRI RAO

Brief facts of these appeals are as follows:

Service Tax Appeals Nos. 41302 & 41303 of 2017 have been filed by M/s. Saint Gobain Research India Ltd. (hereinafter referred to as 'Appellant') assailing the impugned Orders-in-Appeal Nos. 94&95/2017 dated 28.02.2017 of Commissioner of Service Tax (Appeals-I), Chennai partly upholding and partly remanding the impugned Orders-in-Original No. 80/2015 (R) dated 31.12.2015 and 81/2015 (R) dated 31.12.2015 rejecting rebate claims of Rs.38,29,135/- and Rs.28,80,245/- respectively, under Notification No. 39/2012-CE(NT) dated 20.06.2012, towards service tax paid on the export of services.

1.2 Likewise, Service Tax Appeals Nos. 42073 to 42077 of 2017 have been filed by the Appellant assailing the impugned Orders-in-Appeal Nos. 299-303/2017 dated 14.06.2017 of Commissioner of Service Tax (Appeals-I), Chennai upholding the impugned Orders-in-Original rejecting rebate claims under Notification No. 39/2012-CE (NT) dated 20.06.2012 towards service tax paid on the export of services , the details of which have been tabulated below: -

S.No.	Appeal No./ Date	OIO No./ Date	Period Involved	Refund Claimed	Appealed Amount
(1)	(2)	(3)	(4)	(5)	(6)
1	306/2016 (STA-I)(ST-I) Dt 19.07.2016	53/2016(R) Dt. 31.05.16	Apr’15 to Jun’15	₹1,20,06,091/-	₹86,49,277/-
2	307/2016 (STA-I)(ST-I) Dt 19.07.2016	52/2016(R) Dt. 31.05.16	Jan’15 to Mar’15	₹56,58,680/-	₹44,86,132/-
3	400/2016 (STA-I)(ST-I) Dt 27.09.2016	79/2016(R) Dt. 09.08.16	Jul’15 to Sep’15	₹15,40,288/-	₹2,23,847/-
4	401/2016 (STA-I)(ST-I) Dt 27.09.2016	80/2016(R) Dt. 09.08.16	Oct’15 to Dec’15	₹2,01,61,563/-	₹1,61,61,054/-
5	465/2016 (STA-I)(ST-I) Dt 21.11.2016	91/2016(R) Dt. 19.09.16	Jan’16 to Mar’16	₹1,85,22,167/-	₹1,37,14,804/-

1.3 Further, Service Tax Appeal Nos. 42070, 42073, 42074/2018 have been filed by the Appellant assailing the impugned Orders-in-Appeal Nos. 170-172/2017 dated 28.03.2017 of Commissioner of Service Tax (Appeals-I), Chennai upholding the impugned Orders-in-Original rejecting rebate claims under Notification No. 39/2012-CE(NT) dated 20.06.2012 towards service tax paid on the export of services, the details of which have been tabulated below: -

S.No.	Appeal No./ Date	OIO No./ Date	Period Involved	Refund Claimed	Refund rejected
(1)	(2)	(3)	(4)	(5)	(6)
1	221/2016 (STA-I)(ST-I) Dt. 18.05.2016	30/2016(R) Dt. 22.03.16	Oct’13 to Mar’14	₹1,58,68,528/-	₹1,00,65,760/-
2	230/2016 (STA-I)(ST-I) Dt. 25.05.2016	33/2016(R) Dt. 29.03.16	Oct’14 to Dec’14	₹1,00,20,356/-	₹66,59,687/-

3	231/2016 (STA-I)(ST-I) Dt. 25.05.2016	32/2016(R) Dt. 29.03.16	Apr'14 to Sep'14	₹77,34,640/-	₹33,20,087/-

1.4 All the above appeals are being taken up together for disposal by a common order as the issue involved in all these Appeals is identical relating to the jurisdiction of this Tribunal to adjudicate the disputes arising out of rebate claims.

2.1 Facts indicate that the Appellant was registered with Service Tax Department under the category of Business Support service, Technical Testing and Analysis service, Intellectual Property Rights service other than copyright, Scientific and Technical Consultancy service, Technical Inspection and Certification Agency service and Business Auxiliary service. The appellant had filed rebate claims of tax paid on input services under Notification No. 39/2012-CE(NT) dated 20.06.2012 on the export of services and the Adjudicating Authority rejected a part of the refund claims.

2.2 Being aggrieved, the Appellant filed an appeal before the lower Appellate Authority who upheld / partially allowed the impugned Orders-in-Original. Hence, the

Appellant has preferred the above appeals before this forum.

3. The main contentions of the Appellant as detailed in the Grounds of Appeal have been summarised below: -

i. It was averred that the Appellants have satisfied the conditions prescribed under Notification No.39/2012-ST dated 20.06.2012 to claim rebate of tax paid on input services and therefore rebate claims could not be rejected or denied on any other ground.

ii. It was submitted that the impugned order had denied the rebate claims on various services on the ground that they are either facilitating activities or not related to output services which is erroneous as they have already paid service tax on such services which is the sole criteria for claiming rebate under Notification No. 39/2012-ST dated 20.06.2012. Reliance was placed on the decision of the Bombay High Court in the case of *Marmagoa Steel (Bombay)* which was affirmed by the Hon'ble Supreme Court.

iii. It was contended that the denial of credit on advance rental was misplaced as the service tax was paid and the advance rental was essential to utilise the building for rendering output service and therefore the findings in the impugned order was legally unsustainable.

Reliance was placed in this regard on the decision of the Andhra Pradesh High Court in the case of *CCE, Vishakapatnam-II Vs. Sai Samhita Storages (P) Ltd. [2011 (270) ELT 33 (AP)]* and the decision of the Hon'ble Karnataka High Court in the case of *CCE, Mysore Vs. ICL Sugars Ltd. [2011 (271) ELT 360(Kar)]*.

iv. It was submitted that they were eligible to avail Cenvat credit on Rent-a-Cab service and thereby denial of credit was not sustainable in view of the decision of the Hon'ble High Court of Karnataka in the case of *CCE, Bangalore-III Vs. Stanzen Toyotseu India (P) Ltd. [2011 (23) STR 444 (Kar)].*

v. It was submitted that Catering services was provided to employees/ labourers for the construction of premises and they were eligible to avail input service credit in view of the decision in the case of *Hindustan Coca Cola Beverages Pvt. Ltd. Vs. CCE, Hyderabad-I [2017 (49) STR 88 (Tri.- Hyd.)].*

vi. It was submitted that the Appellant received event management and manpower recruitment services from different entities in relation to promotion of their sales and brand name which was in relation to their business and therefore were eligible for availing Cenvat credit and placed reliance on the decision in the case of *Shree Cement Ltd. Vs. CCE& ST, Jaipur-II [2014 (36) STR 1107].*

vii. Regarding Cenvat credit denied on the ground that the invoices were incomplete, it was averred that there is no merit in rejection of the refund when the duty paid nature of the document is not in doubt. Reliance was placed on the decisions in

a. *Bajaj Hindustan Ltd. Vs. CCE, Lucknow [2013 (30) STR 675]*
b. *Amalgamation Repco Ltd. Vs. CCE [2013 (31) STR 370 (Tri.-Chennai)] and*
c. *Hydus Technologies India Pvt. Ltd. Vs. CCE, Cus & ST, Hyderabad-II [2017 (52) STR 186 (Tri.-Hyd.)]*

4.1 The Ld. Counsel Shri S. Muthuvenkataraman representing the Appellant reiterated the averments in the grounds of appeal and further submitted that that they have reversed the entire credit taken to become eligible for the rebate claim and satisfied every single condition prescribed under the notification to claim rebate of tax paid on input services, thus the rebate claim cannot be rejected. It was submitted that except for the Cenvat credit on rent-a-cab, all others are eligible credits as contemplated by Service Tax Provisions.

4.2 The Ld. Counsel submitted that the rejection of rebate claim on the ground that debit note is not a relevant document for taking credit is legally untenable in view of the following decisions:

i. *Pharma Labs Process EquipmentsPvt. Limited. Vs. C.C.E., Ahmd. [2009 (242) E.L.T. 467 (Tri.-Ahmd.)]*
ii. *CCE, Salem Vs. Pallipalayam Spinners (P) Ltd. [2010-TIOL-1723- CESTAT-MAD]*
iii. *Missionpharma Logistics (I) Pvt. Ltd. Vs. CCE, Rajkot [2012 (27) S.T.R. 60 (Tri.-Ahmd.)]*
iv. *VSL Steels Ltd. Vs.CCE, Bangalore [2013 (295) ELT 725 (Tri.-Bang.)]*

4.3 The Ld. Counsel submitted that as they have already reversed the credit taken on such capital goods the Assistant Commissioner should have permitted the Appellalnt to take back the credit in their books so that appellants will be in a position to utilize the same for the purpose of payment of service tax on any output service provided locally and therefore pray for such re-credit.

4.4 During the hearing before the Tribunal, on a specific query regarding the jurisdiction of the Tribunal to entertain disputes arising out of sanctioning of rebate claims, the Ld. Counsel has submitted that he would be filing a short note on the maintainability of the Appeals before this Tribunal. In his short note filed on 29.01.2025, the Ld. Advocate has submitted that: -

i. In view of amendment carried out by Finance Act, 2015 the jurisdiction of the Hon'ble Tribunal to entertain an appeal regarding rebate of Service Tax paid on input services has been ousted.
ii. On examination of the provisions of law and the amendments made thereto, it appears that the jurisdiction of the Tribunal to entertain appeals pertaining to rebate of service tax has been curtailed and the authority before whom such appeals are to be filed is the revisionary authority under Section 35EE of the Central Excise Act, 1944.

4.5 The Ld. Advocate has prayed that the above appeals field before this Tribunal may be decided accordingly or may pass such further or other orders in this and thus render justice.

5. The Ld. Authorised Representative Smt. O.M. Reena and Smt. Anandalakshmi Ganeshram representing the Department affirmed the findings in the impugned orders and submitted that the Appellant had availed credit on ineligible services and so rejection of part of the rebate claims is in order. It was also submitted that the dispute

involved in all these appeals pertained to rebate claims and the appeals should have been filed before the Revisionary Authority, Government of India.

6. We have carefully considered the submissions made by both the sides and also evidences available on records.

7. We find that the Appellant had filed rebate claims of tax paid on input services under Notification No. 39/2012-CE(NT) dated 20.06.2012 on the export of services and the adjudicating authority had partly rejected the rebate claims which were appealed against. As the lower appellate authority had upheld the order of the Adjudicating Authority, the present appeals were filed by the Appellant before this forum.

8. It was alleged by the Department that the Appellant had contravened condition (e) of the Notification No.39/2012-ST dated 20.06.2012 by availing the Cenvat credit on input services during the relevant period and contravened condition 3 of the Notification No.39/2012-ST by not filing declaration with Jurisdictional Assistant Commissioner of Central Excise specifying the service

intended to be exported. It was also alleged that the service provider has claimed credit on capital goods which is not eligible as the condition mentioned that rebate was available only on inputs or input services. But, the Appellant has denied all the allegations and submitted that the findings of the impugned order were misplaced for the reasons set out in the grounds of appeal mentioned above. As the issue involved in all these appeals is the jurisdiction of the Tribunal to entertain these, there is no need to discuss about the contentions of the Appellant or the merits of eligibility or otherwise of the input services as credit.

9. The Notification No. 39/2012-ST dated 20.06.2012 relates to rebate claim for duty paid on excisable inputs, cess and Service Tax paid on taxable input services used in services exported to any country other than Nepal and Bhutan which reads as follows: -

> *"**Exports — Rebate for duty paid on excisable inputs, cess and Service tax paid on taxable input services used in services exported to any country other than Nepal and Bhutan***
>
> *In exercise of the powers conferred by rule 6A of the Service Tax Rules, 1994 (hereinafter referred to as the said rules), the Central Government hereby directs that there shall be granted rebate of the whole of the duty paid on excisable inputs or the whole of the service tax and cess paid on all input services (hereinafter referred to as 'input services'), used in providing service exported in terms of rule 6A of the said rules, to any country other than Nepal*

and Bhutan, subject to the conditions, limitations and procedures specified hereinafter,-

***2. Conditions and limitations** :-*

(a) that the service has been exported in terms of rule 6A of the said rules;

(b) that the duty on the inputs, rebate of which has been claimed, has been paid to the supplier;

(c) that the service tax and cess, rebate of which has been claimed, have been paid on the input services to the provider of service;

Provided if the person is himself is liable to pay for any input services; he should have paid the service tax and cess to the Central Government.

(d) the total amount of rebate of duty, service tax and cess admissible is not less than one thousand rupees;

(e) no CENVAT credit has been availed of on inputs and input services on which rebate has been claimed; and

(f) that in case,-

(i) the duty or, as the case may be, service tax and cess, rebate of which has been claimed, has not been paid; or

(ii) the service, rebate for which has been claimed, has not been exported; or

(iii) CENVAT credit has been availed on inputs and input services on which rebate has been claimed, the rebate paid, if any, shall be recoverable with interest in accordance with the provisions of section 73 and section 75 of the Finance Act, 1994 (32 of 1994)

3. Procedure.

***3.1 Filing of Declaration.** - The provider of service to be exported shall, prior to date of export of service, file a declaration with the jurisdictional Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise, as the case may be, specifying the service intended to be exported with,-*

(a) description, quantity, value, rate of duty and the amount of duty payable on inputs actually required to be used in providing service to be exported;

(b) description, value and the amount of service tax and cess payable on input services actually required to be used in providing service to be exported.

3.2 Verification of declaration. *- The Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise, as the case may be, shall verify the correctness of the declaration filed prior to such export of service, if necessary, by calling for any relevant information or samples of inputs and if after such verification, the Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise is satisfied that there is no likelihood of evasion of duty, or as the case may be, service tax and cess, he may accept the declaration.*

3.3 Procurement of input materials and receipt of input services. *- The provider of service to be exported shall,-*

(i) obtain the inputs required for use in providing service to be exported, directly from a registered factory or from a dealer registered for the purposes of the CENVAT Credit Rules, 2004 accompanied by invoices issued under the Central Excise Rules, 2002;

(ii) receive the input services required for use in providing service to be exported and an invoice, a bill or, as the case may be, a challan issued under the provisions of Service Tax Rules, 1994.

3.4 Presentation of claim for rebate.*-*

*(**a**)(i) claim of rebate of the duty paid on the inputs or the service tax and cess paid on input services shall be filed with the jurisdictional Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise, as the case may be, after the service has been exported;*

(ii) such application shall be accompanied by, –

(a) invoices for inputs issued under the Central Excise Rules, 2002 and invoice, a bill, or as the case may be, a challan for input services issued under the Service Tax Rules, 1994, in respect of which rebate is claimed;

(b) documentary evidence of receipt of payment against service exported, payment of duty on inputs and service tax and cess on input services used for providing service exported, rebate of which is claimed;

(c) a declaration that such service, has been exported in terms of rule 6A of the said rules, along with documents evidencing such export.

*(**b**) The jurisdictional Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise, as the case may be, having regard to the declaration, if satisfied that the claim is in order, shall sanction the rebate either in whole or in part."*

10. The above facts very clearly indicate that all the appeals pertained to rebate claims filed by the Appellant before the Lower Authorities. As such, the issue that has to be examined in these appeals is regarding whether Tribunal has jurisdiction to decide these rebate cases. It would be expedient to reproduce provisions of Sections 35B and 35EE of the Central Excise Act, 1944, and Section 86 of the Finance Act, 1994 which read as follows: -

"35B. APPEALS TO THE APPELLATE TRIBUNAL

(1) Any person aggrieved by any of the following orders may appeal to the Appellate Tribunal against such order

(a) a decision or order passed by the [Principal Commissioner of Central Excise or Commissioner of Central Excise] as an adjudicating authority;

(b) an order passed by the Commissioner (Appeals) under section 35A;

(c) an order passed by the Central Board of Excise and Customs constituted under the Central Boards of Revenue Act, 1963 (54 of 1963), (hereafter in this Chapter referred to as the Board) or the Appellate [Principal Commissioner of Central Excise or

Commissioner of Central Excise] under Section 35, as it stood immediately before the appointed day;

(d) an order passed by the Board or the [Principal Commissioner of Central Excise or Commissioner of Central Excise], either before or after the appointed day, under section 35A, as it stood immediately before that day :

*[**Provided that no appeal shall lie to the Appellate Tribunal and the Appellate Tribunal shall not have jurisdiction to decide any appeal in respect of any order referred to in clause (b) if such order relates to,*** *-*

(a) a case of loss of goods, where the loss occurs in transit from a factory to a warehouse or to another factory, or from one warehouse to another, or during the course of processing of the goods in a warehouse or in storage, whether in a factory or in a warehouse;

(b) 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;

(c) goods exported outside India (except to Nepal or Bhutan) without payment of duty;"

"35EE. Revision by Central Government

(1) The Central Government may, on the application of any person aggrieved by any order passed under Section 35-A, where the order is of the nature referred to in the first proviso to sub-section (1) of Section 35-B, annul or modify such order:

[Provided that the Central Government may in its discretion, refuse to admit an application in respect of an order where the amount of duty or fine or penalty, determined by such order does not exceed five thousand rupees.]

Explanation.—For the purposes of this sub-section, "order passed under Section 35-A" includes an order passed under that section before the commencement of Section 47 of the Finance

Act, 1984 (21 of 1984) against which an appeal has not been preferred before such commencement and could have been, if the said section had not come into force, preferred after such commencement, to the Appellate Tribunal.

[(1A) The [Principal Commissioner of Central Excise or Commissioner of Central Excise] may, if he is of the opinion that an order passed by the Commissioner (Appeals) under Section 35-A is not legal or proper, direct the proper officer to make an application on his behalf to the Central Government for revision of such order.]

(2) An application under sub-section (1) shall be made within three months from the date of the communication to the applicant of the order against which the application is being made:

Provided that the Central Government may, if it is satisfied that the applicant was prevented by sufficient cause from presenting the application within the aforesaid period of three months, allow it to be presented within a further period of three months."

"Section 86 of the Finance Act, 1994 - Appeals to Appellate Tribunal – *(w.e.f. 14.05.2015)*

(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 [xxx]], or an order passed 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 services, such order shall be dealt with in accordance with the provisions of section 35EE of the Central Excise Act, 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, 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]"*

In view of the first proviso to Section 35B of the Central Excise Act, 1944 where an order passed by the Commissioner (Appeals) under Section 35A, the Tribunal shall not have jurisdiction to decide any appeal relating to rebate of duty of excise on goods exported against the Order-in-Appeal passed by the Commissioner (Appeals) under Section 35B(1)(b). In respect of rebate claims filed, appeals have to be filed before the Revisionary Authority, Government of India under Section 35EE of the Central Excise Act, 1944. In terms of provisions of Section 86 of the Finance Act, 1994 where an order relating to service which is exported which 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, appeals are required to be filed before the Revisionary Authority, Government of India in accordance with the provisions of Section 35EE of the Central Excise Act, 1994.

11. In respect of impugned Orders-in-Appeals Nos. 94&95/2017 (STA-I) dated 28.02.2017, Nos. 299-303/2017

(STA-I) dated 14.06.2017 and Nos. 170-172/2017 (STA-I) dated 28.03.2017, the Appellant has filed 12 rebate claims for the period from October 2012 to March 2016 for claiming input tax service credit on export of services in terms of Rule 6A of Service Tax Rules, 1994.

12. The Ld. Counsel in his short note submitted on 29.01.2025 has also stated that appeals were filed wrongly before this Tribunal. The proviso of Section 35B of the Central Excise Act, 1944 clearly speaks of exclusion of jurisdiction of this Tribunal in relation to matters relating to rebate of duty. As all the impugned orders passed by the Commissioner (Appeals) relates to rebate claims, the Tribunal lacks jurisdiction in these matters. These appeals are not maintainable before this Tribunal as the remedy lies under Section 35EE of the Central Excise Act, 1944 by way of filing revision applications to Central Government.

13. Thus, these appeals are dismissed for want of jurisdiction.

(Order pronounced in open court on 06.02.2025)

Sd/-
(AJAYAN T.V.)
MEMBER (JUDICIAL)

Sd/-
(VASA SESHAGIRI RAO)
MEMBER (TECHNICAL)

MK